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J. 6. 88

THE PARSON'S Counsellor, WITH THE LAW OF TYTHES or TYTHING:

In Two Books.

The first sheweth the Order every Parson, Vicar, &c. ought to observe in obtaining a *Spiritual Preferment*, and what *Duties* are incumbent upon him after the taking the same, and many other things necessary for every CLERGY-MAN to know and observe.

The second shews, in what manner all Sorts of *Tythes Offerings, Mortuaries*, and other *Church-Duties* are to be paid, as well in *LONDON* as elsewhere, and as well by the *Canon* as *Common* and *Statute-Laws*, and in what Courts and manner they may be recovered, what *Charges* they are subject to, and many other things concerning the same; necessary for CLERGY-MEN and *All others* to know.

The Fifth Edition Corrected, and much enlarged in many particulars through the whole Book, with a Table, &c. by the Author.

Written by Sir *SIMON DEGGE*, Kt.

LONDON:

Printed by the Assigns of *Richard* and *Edward Atkyns*, Esquires; for **Richard Sare** at *Grays-Inn Gate*, and **Jos: Hindmarsh** against the *Exchange* in *Cornhill*. M DC XC V.

1587:10

TO THE

RIGHT HONOURABLE

AND

RIGHT REVEREND

FATHER in GOD,

THOMAS,

Lord Biſhop of

Lichfield and *Coventry.*

My Lord,

I *Thought to have ſent this Trifle into the World without Patron or Author's Name to it; but 'tis well known, how ſcandalous it is to that Child whoſe*

Parent is aſhamed to own it; I therefore reſolved to run the Cenſure of a Critical World: *And then obſerving how ancient Dedications have been both by* Greek *and* Latin Authors, *and that they are continued to this Day throughout all Chriſtendom, I reſolved not to be ſingular: And conſidering that this little Undertaking was performed at the Requeſt of ſome Reverend* Clergy-men *of Your Lordſhips Dioceſs, and that it was Nurſed up to what it is now preſented to Your Lordſhip there likewiſe, I conceived it could not challenge the Patronage of any other more*

properly,

properly, than of Your **Lord-**ſhip; *and therefore ſuch as it is, I here humbly preſent it to Your* **Lordſhip.** **My Lord,** *At firſt I deſigned no more, but the Second Part of what it now is; but obſerving Your* **Lordſhips** *diligent and great Care at Your* **Lord-**ſhips *Primary Viſitation at* **Derby** *againſt* **Simony, Dila-**pidations *and* **Nonreſidence,** *the Three great Peſts in the Church, I added Three Chapters upon thoſe Subjects; and after adding one thing after another, it came to make a diſtinct Part of this Work alone.* **My Lord,** *Your Lordſhip has had many Honoura-*

ble and worthy Predeceſſors, and I cannot forbear to mention to Your Lordſhip your immediate Predeceſſor, my Lord Biſhop **Hacket**, *with what indefatigable Induſtry did he repair, or rather Reedifie the Church at* **Lichfield**, *which he happily lived to finiſh? A Work could hardly have been performed by any other. How circumſpectly, prudently and diligently did he govern his Church, never abſenting himſelf, unleſs in His Majeſties and Countries Service? How conſtantly did he viſit and preach through his Dioceſe? A Religious Pattern for all his*

his Clergy. What great Insight had he both in the Civil, Canon and Common Laws, that related to the Church Government? How oft did he sit in his Consistory to see Justice done? Nay, what did he neglect, that became a worthy Prelate to do? And for his deep and profound Learning in his Function, certainly few exceeded Him, if I have any Judgment. My Lord, I have observed Three things perpetuate mens Memory to Posterity, Children, Learned Writings, *and* Publick and Eminent Buildings, *he was fortunate in them all; He has*

has left a Worthy Son to Inherit his Name, Vertue *and* Temporal Eſtate; *He has left many* Learned Works *for the benefit of Poſterity, whereof ſome are already made publick; and he has made himſelf no leſs Eminent by his* Publick Buildings, *witneſs his Cathedral Church at* Lichfield, *and* Trinity Colledge *in* Cambridge, *where he had his Education; beſides many other Works of Piety and Charity in thoſe few years he was Biſhop.* My Lord, *God hath not yet bleſt you with* Children, *but may in good time, to preſerve Your Name: And I have heard*

Your

Your Lordſhip intends ſome Eminent Works for the Publick; and that your Lordſhip hath reſolved to go on, where your Predeceſſor left, in Building a Palace for your ſelf and Succeſſors; I have great reaſon to believe, having heard your Lordſhip ſo often declare you would do it; and having laid your Hand to the Plough in preparing ſome Materials towards it, I know you will not look back: I have heard your Lordſhip declare how much you delight in Hoſpitality, *which can never be ſo ſplendid as in a* Palace of your own Building: *And hereby your Lordſhip will make* Tit. 1. 8.

your

Your ſelf as Eminent in the next Age, as Your worthy Predeceſſor is in the preſent, than which nothing can be greater ſatisfaction to all, but chiefly to,

My Honoured good Lord,

Your Lordſhips moſt dutiful Son,

and moſt obedient Servant,

S. DEGGE.

TO

To the Parſons, Vicars, and the reſt of the Reverend Clergy of the Church of *England*.

YOur kind Acceptance of the former Impreſſions of this Book, has encouraged me this Fifth time to appear in Publick. The firſt was hurried to the Preſs ſo haſtily, that I had not time ſeriouſly to peruſe it, whereby ſome things were ſlipt in the Copy; and my being far from the Preſs, occaſioned many Miſtakes by the Printer. In this and the later, ſomething more Care has been taken. The only eſſential Overſight in the firſt Impreſſion (which I have yet diſcovered) was in the Sixth Chapter of the Firſt Book, which I muſt

must still desire may be corrected by this. I added many things to the Second, Third and Fourth Editions, with Three whole Chapters; and many things to this. Your continued kind Acceptance makes me think my Labour well bestowed.

Et sic Valete.

S. D.

TO

TO THE

Courteous Reader.

IT is obſerved in the Second Part of Sir *Edward Coke*'s Reports, in the Biſhop of *Winchester*'s Caſe, that there were two great Perſecutions of the Chriſtian Religion, the one under *Diocleſian*, the other under *Julian* the Apoſtate: The firſt by murdering the Prieſts, that by their Preaching advanced the Chriſtian Religion: The latter, by ſpoiling the Church of its Revenues. The former contrary to expectation advanced, and not ſuppreſſed Religion: For it has proved in all Ages, that *Sanguis Martyrum eſt ſemen Eccleſiæ*; for the patient ſuffering of ſo many Martyrs of the Primitive Chriſtians gave the World Co. 2. 44. b.

a ſufficient Teſtimony, that thoſe poor Chriſtians had ſome extraordinary Divine Aſſiſtance to undergo with patience ſo much Cruelty, that no others durſt put themſelves unto the trial of. But the taking away the Revenues of the Church, Martyred the Prieſthood it ſelf, and ſtruck at the Foundation: For when People ſaw there was nothing left but Perſecutions, no Suſtenance for thoſe that Miniſtred at the Altar, it diſcouraged them to breed their Children up to a Study that advanced them to nothing but Danger: which introduced great ignorance of the true Knowledge of God and Religion: So that as one killed the Prieſts, the other deſtroyed the very Prieſthood it ſelf. And tho' the Apoſtle St. *Paul* got his Living by his Labour, that he might not become burthenſom to his

2 Cor. 11. 9.

Pro-

Proſelytes; yet the ſame Apoſtle tells us, that *the Labourer is worthy of his hire*; and that by the Law of *Moſes*, *The Ox was not to be muzzled that treads forth the Corn*: And by way of Expoſtulation in another place, ſays, *Who goes on warfare at his own Charge? Who plants a Vineyard, and eats not of the Fruit thereof? and who feeds a Flock, and eats not of the Milk thereof? For he that ploweth ſhould plow in hope, and he that threſheth ſhould be partaker of his hope.* And again ſays he, *Is it a great thing, that thoſe that ſow to you ſpiritual things, ſhould reap carnal?* And do you not know (ſays the ſame Apoſtle) *that they that Miniſter about holy things, live of the things of the Temple? And that they that wait at the Altar, are partakers with the Altar?* For ſo hath the Lord ordained, *That they that preach the Goſpel, ſhould live of the Goſ-*

2 Cor. 11. 12, 14, 16. Matth. 10. 10. 1 Tim. 5. 18. 2 Cor. 9. 7, 9, 10.

pel. What effect this Doctrine wrought amongst the Primitive Christians, you may read in the fourth Chapter of the *Acts of the Apostles*, where it is said, That *as many as were possessors of Houses or Lands sold them, and brought the prices of things that were sold, and laid them down at the Apostles feet; and distribution was made to every man according as he had need.* But the Christians of this present Age are so far from selling their Houses and Lands, and laying the price at the Apostles feet, that they will rather detain that from the Clergy, which by Law and Right is due to them. But certainly, had the sincerity of the Primitive Christians continued, I should never have needed to have set Pen to Paper upon this Subject I am now about, which is the *Law of Tythes* or *Tything:* A Duty established by the Laws

of

of this, as of other Nations, for the maintenance of the Secular Clergy, and for their ſake it is that I have undertaken this Work. There was a Tything Table publiſhed many years ago by a Bachelor of Laws, wherein he has Learnedly ſet forth the manner of Tything by the Canon and Eccleſiaſtical Laws: But thoſe Laws and the Common Laws of this Realm differing in many things, wherein the Common Law is to be preferred; that Tything Table has often led both Parſon and Pariſhioners into many Errors: Beſides the ſeveral diſcharges from payment of Tythes, either abſolutely, or *ſub modo*, of divers Lands in *England*, by the Statutes or Common Laws, makes great alteration here from the Canon Laws. To rectify which, and (as near as may be) to reconcile the *Canon* and *Common Laws*,

I did by the perſuaſion of ſome Reverend Divines, firſt make ſome Animadverſions upon that Tything Table: But when I had done that, conſidering there were many more things in relation to Tything, that I could not conveniently apply to the Text, concerning *Preſcriptions*, *Cuſtoms*, *Compoſitions*, and other Priviledges, beſides the Laws concerning *Offerings*, *Mortuaries*, and other Church Duties, fit for all men to know, as well Lay as Clergy, I adventured upon this larger Work. Which I the rather did, becauſe I do not find any other that hath Publiſhed any compleat Work in this kind, or to reconcile the Common and Canon Laws, that kind of Learning lying diſperſed in our Law Books; I had therefore in favour of the Parſons and Vicars, taken up a former Reſolution, and adventured

to

to expoſe my ſelf to the publick Cenſure. And though I cannot promiſe any perfection in this Work, yet I dare preſume to ſay, it is the moſt perfect Work of this nature yet extant; though I can pretend to nothing of it but the Errors and Miſtakes, which I will be thankful to any body that will friendly correct, that I may make it more exact in a future Edition, if I have encouragement. The hindrance of converſing with the Learned, by reaſon of my confinement to the Country, and not having acceſs to any publick Libraries, hath hindred me of ſome helps I might have had thereby. Perhaps it may not be ſo acceptable to thoſe in whoſe favour I have writ it, becauſe it comes from the Pen of one who profeſſes himſelf a common Lawyer: But in my Judgment, in this Nation, wherein

the common Laws and Cuſtoms of the Country prevail againſt the Canon and Eccleſiaſtical Laws; this Subject is not altogether improper, if not moſt proper for a common Lawyer. And truly I have through this Diſcourſe dealt with as impartial an hand as the Matter would admit. And though the Clergy may think it to their prejudice, that I have at large ſet forth the ſeveral diſcharges by which Lands are freed from the payment of Tythes: Yet in that I have given them a clear light, which Lands cannot be ſo priviledged, and what Preſcriptions and *Modus decimandi* is not good, being well aſſured that there are more Lands at this day eſcape payment of Tythes upon pretence of ſome priviledge, to which they have no right, than thoſe that pay Tythes, and might legally be diſcharged.

But

But when I have done my beſt endeavour to ſerve the Reverend Clergy, I cannot give them Incouragement to depend upon their own Judgments, grounded upon any thing here writ; for though this may ſuffice to give them ſome light, what ſhall be due to them, yet I cannot hope by any thing I can write to make them Lawyers; for many *Quære's* will ariſe, that no foreſight of mine could give an Anſwer to: But this Benefit I hope they will receive by my Labours, that they may put their caſe, and make their doubts known more pertinently to the Learned. I had no ſooner finiſhed this little Tract concerning Tythes, but I conſidered that there were many other things almoſt as uſeful for a Clergy-man to know, as the Law of Tythes: And though Mr. *Hughes* of *Grays-Inn* many years

ſince publiſhed a learned Tract, which he Intituled the *Parſons Law*; yet there are many more things neceſſary for a Clergy man to know, that are there only briefly, or not at all touched upon; and of ſuch force, that they muſt either be performed and obſerved to make a man a compleat Parſon, or to make him none, though never ſo exactly inſtituted and inducted, if omitted. I have therefore in the firſt place, before I come to the Law of Tythes, ſhewed, what Simony is, and what danger thoſe run themſeles into, that are guilty of it; what things every Parſon, Vicar, &c. is to do before, at, and after his Inſtitution and Induction, to make him a compleat Parſon, &c. what Dilapidations are, and how puniſhable; what Priviledges the Clergy have at this day by the Laws of *England*; what

what charges and payments their Tythe and Church Livings are ſubject unto; what Cauſes of Deprivation have been allowed of by the Laws of *England*; what Leaſes they may take or ſet, and what Statutes they may fall in danger of; and of Pluralities, and who is qualified to have them, and in what manner to be accepted; Nonreſidence, and many other things neceſſary for every Clergy man to know. I have divided the whole into Two Books, and them again into ſeveral Chapters and Paragraphs, and added a ſhort Table for the more ready finding of any thing in either. I have likewiſe added a Liſt or Catalogue of all the Abbies and Priories that were valued in the Kings Books at 200 *l. per Annum*, or upwards, and which were diſſolved by the Statute of 31 *H.* 8. the Lands of which can only pretend

pretend to any priviledge to be diſcharged of the payment of Tythes; in which I have rather choſen to write after Mr. *Dugdale*, being a ſurer Author than Mr. *Speed*, in whom I have obſerved many Miſtakes. I muſt beg the Readers patience to correct the Miſtakes of the *Printer* (which are too many, by reaſon of my abſence from the Preſs:) And for my own, I ſhall take it kindly from any body, that will in a Friendly manner inform me of them; for *Humanum eſt errare*; and though I may have cauſe to be aſhamed of them, yet I will never be aſhamed to amend.

Vale.

THE

The Contents of the ſeveral Chapters contained in the Firſt Part of this Book, Intituled, *The Parſons Counſellor.*

CHAP. 1. *ſheweth, Who may, or may not be a Parſon, Vicar, &c.* Who may be a Parſon.

Chap. 2. *ſheweth, How one that is a perſon fitly qualified to be a Parſon, Vicar, &c. ought to proceed in the obtaining and accepting of a Benefice.* How he muſt proceed in taking a Living.

Chap. 3. *ſhews, In what caſes it is neceſſary for the Biſhop to have a* Jure Patronatus, *and how to proceed in the ſame, and what is the force and effect thereof.* *Jure Patronatus.*

Chap. 4. *ſhews, How the Law ſtood concerning Pluralities before the Statute of* 21 H. 8. *who are qualified within that Law to have Pluralities, and how they ought to behave themſelves in taking the ſecond Livings, ſo that the firſt may not be made void.* Pluralities.

Chap. 5. *ſhews, What Simony is, and who ſhall be ſaid to be guilty of it, and what are the dangers enſuing thereupon.* Simony.

Chap. 6. *ſhews, What one is to do before and at Inſtitution, and after Induction, to make himſelf a compleat Parſon.* What he is to do, at, before, and after Inſtitution and Induction.

Chap. 7. *ſhews, What is required further of Parſons, &c. after Induction, and what Non-reſidence is, and the dangers incurred thereby, and what matters will excuſe the ſame.* Non-reſidence.

Chap.

Dilapidations. Chap. 8. *shews, What shall be said to be Dilapidations, and how the same are remedied and punished.*

Deprivation. Chap. 9. *shews, For what cause a Parson, Vicar, &c. may be deprived, according to the Rules of the Common Laws.*

Leases. Chap. 10. *shews, What Leases a Parson, Vicar, &c. may make of his Glebe and Tythes, and*

Farms. *what Farms he may, or may not take, and within the danger of what other Statutes they may fall.*

Priviledges of the Clergy. Chap. 11. *shews, What Priviledges are allowed to the Clergy in Holy Orders by the Statute and Common Laws of this Realm, and what are pretended to by the Eccleſiaſtical Laws.*

Chap. 12. *shews, How the Law ſtands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how the Churches and Chappels are to be repaired, and concerning the Seats, Burials, Tombs, Coats of Arms, and other Enſigns of Honour in memory of the dead; and of the Church-Ornaments, and at whoſe charge to be provided; and what remedy for Treſpaſſes in the Church, Church-yard, or in breaking up of Tombs, taking, carrying away or imbezelling any of the Goods, or Ornaments of the Church, &c.*

Chap. 13. *Treats of Parſonages, Vicarages,* Sine Cura's, *and Donatives, and of the Endowments of Vicarages, and how, and in what Caſes a Parſonage and the Vicarage are to be reunited, and many other things relating to Parſonages, Vicarages, Donatives, and* Sine Cura's.

Chap. 14. *ſhews, What Reſignations and Permutations are, in what manner they may be made, and other matters relating to them.*

The

The Contents of the ſeveral Chapters contained in the Second Part of this Book, Intituled, *The Law of Tythes or Tything.*

CHAP. 1. *ſhews, What Tythes are, the ſeveral ſorts and kinds thereof, and how the ſame become due.* — *Quid, quotuplex, & quo modo debet.*

Chap. 2. *ſhews, By whom, and to whom Tythes ought to be paid.* — By whom, and to whom due.

Chap. 3. *ſhews, Of what things Tythes are due to be paid, and in what manner the Tythes of Corn, Hay, &c. are to be paid.* — What things are tythable, Corn, Hay, &c.

Chap. 4. *ſhews, Where and in what caſes the Tythes of Wood ought to be paid.* — Wood.

Chap. 5. *ſhews, Where Tythes are due for Herbage or Agiſtment of Cattle, and who is to pay the ſame.* — Herbage.

Chap. 6. *ſhews, Where and in what manner the Tythes of Calves, Milk, Cheeſe, Wool, Lambs, Pigs, &c. are payable.* — Calves, Milk, Cheeſe, Wool, Lambs, Pigs, &c.

Chap. 7. *ſhews, In what manner the Tythes of Seeds, Fruit, Maſt, Bees, &c. are to be paid.* — Seeds, Fruit, Maſt, Bees,

Chap. 8. *ſhews, Where and in what manner the Tythes of Pigeons, Conies, Fiſh, Deer, and other Birds and Beaſts* feræ naturæ, *are tythable.* — Honey. Things *feræ naturæ.*

Chap. 9. *ſhews, Of what nature the Tythes of Mills are, and in what caſes payable.* — Mills.

Chap. 10. *Treats of the Tythes of Hawking, Hunting, Fiſhing, Fowling, &c. and other perſonal Tythes.* — Perſonal Tythes.

Chap.

Domeſtick Birds. Chap. 11. *Treats of the Tythes of Ducks, Geeſe, Swans, Turkeys, and other domeſtick Fowls and Birds.*

Of what things Tythes are not payable. Chap. 12. *ſhews, Of what things Tythes are not due by the Common Laws of this Realm.*

Cuſtoms. Chap. 13. *ſhews, What force Cuſtoms have as well in the form and manner of Tything, as in the diſcharging the payment thereof, and the difference between Cuſtom and Preſcription.*

Intereſt in the Lands. Chap. 14. *ſhews, What Priviledges the Parſon, Vicar, &c. have in the Grounds where the Tythes ariſe, for the drying, making and carrying away the ſame.*

To what charge ſubject. Chap. 15. *ſhews, To what charges the Glebe and Tythes are ſubject and liable.*

Modus decimandi. Chap. 16. *ſhews, How far Preſcription will prevail in the manner of Tything, and in what caſes a* Modus decimandi, *will bind the Parſon, &c.*

How to be deſtroyed. Chap. 17. *ſhews, How a* Modus decimandi *may be deſtroyed.*

How to be conveyed. Chap. 18. *ſhews, By what Conveyances, and by what names Tythes may be granted, demiſed, &c. and what Demiſes and Leaſes made by Parſons, Vicars, and other Eccleſiaſticks, &c. are good.*

Of Leaſes.

Barren Ground. Chap. 19. *ſhews, What barren Lands are freed from payment of Tythes within the Statute of* 2 E. 6.

Real Compoſitions. Chap. 20. *ſhews, What a Real compoſition is, and in what caſes Lands ſhall be freed from the payment of Tythes thereby.*

Monaſtery Lands. Chap. 21. *ſhews, What Monaſtery Lands are, or may be freed from the payment of Tythes.*

Perſonal Tythes. Chap. 22. *ſhews, What Perſonal Tythes are, and in what caſes due and payable.*

Chap.

Chap. 23. *ſhews, What Oblations, Offerings, &c. are, and where due and payable.* Oblac'ons.

Chap. 24. *ſhews, What Mortuaries are, and in what caſes they are due and payable.* Mortuaries.

Chap. 25. *ſhews, How Tythes are to be paid in* London, *and ſeveral Reſolutions upon the Statute, made for the payment thereof.* London.

Chap. 26. *ſhews, In what Courts and in what manner Tythes may be ſued for, and in what caſes Prohibitions lye for the ſtaying of Suits for Tythes in the Eccleſiaſtical Courts, and how to proceed therein.* How recoverable. Prohibition.

Di-

Directions in the Marginal References.

Note, *That in my References to printed Books in this Treatiſe, I for the moſt part refer to the Page and part of the Page where the Matter is to be found in this manner: If the Matter be at the upper end of the Page I mark it with three Pricks thus ∴ if in the middle thus .. if at the lower part thus ∵ and where the Book is numbred by Fol. I add the* **A** *or the* **B** *ſide, as it happens.*

THE

THE PARSONS COUNSELLOR.

CHAP. I.

The first Chapter shews, Who may, or who may not, be a Parson, Vicar, &c.

HAving taken upon me to be the *Parsons Counsellor*, it is necessary in the first place, to shew who may be a Parson, Vicar, &c.

And by a Statute made in the 14*th* year of King *Charles* the Second, all are made incapable of being admitted to any Parsonage or Vicarage, Benefice or other Ecclesiastical Promotion, Preferment or Dignity whatsoever, unless such person have Episcopal Ordination; and if any shall presume to be Admitted, not having such Ordination, or shall presume to Administer the Sacrament of the Lords Supper, not being so Ordained, he is to forfeit an hundred pounds. 14 Car. 2. ca. 4 Promotion.

Concil. Arelat. Can. 1. Concil. Constant. cap. 14 & 15. Concil. Neocæsar. cap. 11.

By divers ancient Canons of the Church, no man was to be a Deacon before he was twenty five years of Age, nor a Priest before he should attain the Age of thirty years; but notwithstanding the Canons, they were frequently dispensed with, and made Priests younger.

St. 13 Eliz. c. 12.

And by a Statute made in the 13*th* year of Queen *Elizabeth*, it is Enacted, That none shall be made Minister, or admitted to Preach or Administer the Sacraments, being under the Age of twenty four years; nor unless he first bring to the Bishop of that Diocess, from men known to the Bishop to be of sound Religion, a Testimonial both of his honest Life, and of his professing the Doctrine expressed in the Thirty nine Articles; and unless he be able to answer and render to the Ordinary an accompt of his Faith in Latin, according to the said Articles, or have a special gift and ability to be a Preacher: Nor shall be admitted to the Order of Deacon or Ministry, unless he shall first subscribe to the said Articles.

By implication this Statute allows a man to be made a Priest at twenty four, whereas by the Canons he could not be a Priest before thirty years of Age.

And all Dispensations in this Case are made void by the same Statute.

So that upon the whole matter, none can be a Priest before he is four and twenty years of Age, nor none can be a Parson before he is a Priest.

Can. Jac. 33. distinct. 70. cap. Nemine.

And by divers ancient Canons, and by Canons of our own, none ought to be Ordained a Priest before he have a Title, that is, a Presentment to a Parsonage, Vicarage, or a Curacy.

And

And by another Provincial Canon of our own, those that have been guilty of Homicide, or that have been Advocates *in causa Sanguinis*; those that are guilty of Symony, or makers or solicitors of Symoniacal Contracts, Witchcraft, burners of Churches, cannot be Priests without special Dispensation, nor by consequence Parsons or Vicars. Cap. Imprimis.

And by another Provincial Canon of our own, those that are guilty of Symony, Homicide, persons Excommunicate, * Usurers, Sacrilegious persons, Incendiaries, *vel* † *Falsarios*, may not be admitted into Holy Orders, and by consequence may not be Parsons, Vicars, &c. Cap cum quanta. * Distinctio. 47. Co 5.58.a. † Perjury, Forgery dist. 50. si Episcopus. 38 E. 3. 2. a.

And by a Canon in the Council of *Nice*, a man that voluntarily castrated himself might not be a Priest; but if it were done by Enemies, or by the advice of Physicians for Healths sake, it was no disability.

Bastards cannot be Priests without Dispensation, nor by consequence Parsons. Cap. eos qui de non. Dyer 293. 5 H. 7. 20. a.

A Villain cannot be a Parson, and if he be presented to a Living, the Bishop may refuse him. 14 H. 7. 28. b. 15 H. 7. 7. b. 5 H. 7. 20. a.

A Miscreant that does not believe the Truth, an Infidel that does not believe at all, a Jew, Schismatick or Heretick that do not believe aright, ought not to be Parsons, and if Indicted, ought to be deprived; and so if the party be Irreligious or Illiterate; so if the party presented be *mere laicus* or *utlawed*. Co. 5. 58. a.

And the Bishop may refuse a Clerk *quia criminosus*, for any of the Crimes aforesaid, though the party be not convict, so the Bishop be certain of the Truth therof.

Co. 5, 58. a.

And all things that are just causes to deprive a Clerk, are just causes to refuse a Clerk when presented.

Ibid.

But it is no good cause to refuse a Clerk, because he is a player at unlawful Games, or a haunter of Taverns: Because these are not *malum in se*, but *malum prohibitum.*

Linwood. Cap. Cum à jure inhibitum. Conc. Lateran. Can. 31.

And the Son cannot, without a Dispensation, be Parson of the same Church that his Father was Incumbent of the next before him.

Albany vers. Eveſque Lichf. M. 26 & 27 El. C. B. rot. 2023. Cro. Eliz. 119. Lucas vers. Eveſque Bath. P. 3 El. per Bendloes.

If a man cannot speak such Language as the Parishioners understand, he ought not to be admitted Parson of such a Parish, but may be refused by the Bishop: For to be illiterate, and not to be understood, is all one to the Parishioners: And when the blind leads the blind, both fall into the Pit.

4 Inst. 338. 1 Leonard 130. Dyer 293. b. Mich. 16 & 17 Eliz. per Harper.

The Bishop cannot refuse a Clerk, because he wants a Testimonial.

But it should seem, that if the Bishop does admit and institute any person into a Living that lies under any of these Incapacities, the Church is full *de facto* till Sentence of Deprivation, Nullity, &c. as the case requires, and no Lapse incurs.

4 Inst. 338. Stat. 3 R. 2. c. 3. 7 R. 2. cap. 12. 5 R. 2. nu. 91. 6 R. 2. nu. 31. 10 R. 2. nu. 20. 1 H. 5. cap. 7. Can. 23.

An Alien born at this day, I take it cannot be a Parson, Vicar, &c. nor is capable of any Spiritual Preferment, without the Kings special Licence, and the Bishop may deny to admit and institute him, as Sir *Edward Coke* conceives.

By a Canon in the third Council of *Lateran*, unde *Alexander* the Third, it was decreed that none should be Parson of a Parish under 25 years of Age.

Vide

Vide *Leviticus, cap.* 21. *v.* 17, 18, 19, 20, *&* 21. what bodily blemiſhes diſabled Prieſthood under the Law.

CHAP. II.

The ſecond Chapter ſhews, how one that is fitly qualified to be a Parſon, ought to behave himſelf in obtaining a Living.

A Parſon ſo qualified as the Law requires, muſt without any corrupt or ſymoniacal Contract, obtain a Preſentation from the right and undoubted Patron of the Church, whereof he deſigns to be Parſon; which may be in this Form:

Reverendo in Chriſto Patri & Domino T. *divina permiſſione* L. *&* C. *Epiſcopo, ejuſve Vicario in ſpiritualibus generali* A.B. *Armiger, in. dubitatus Patronus Eccleſiæ Parochialis de* C. *in Comitatu* D. *ſalutem in Domino ſempiternam. Ad Eccleſiam de* C. *prædictam veſtræ Dioceſios, modo per mortem,* (if void by the death of the laſt Incumbent;) but if it be by Reſignation, then you muſt ſay (*modo per reſignationem*; but if the Church be void by the laſt Incumbent's being made a Biſhop, or by taking a ſecond Living, not being qualified, then you may ſay (*per ceſſionem*) or as the ſpecial Matter is; or if by Deprivation, then you muſt ſay (*per deprivationem*, and then proceed, E. F. *ultimi incumbentis ibidem jam vacantem, & ad meam*

The Form of a Preſentation. See other Forms of Preſentations Regiſt. orig. 301

donationem pleno jure ſpectantem, dilectum mihi in Chriſto G.H. *Clericum in Artibus Magiſtrum, paternitati veſtræ præſento, humiliter ſupplicans, quatenus præfatum* G. H. *ad dictam Eccleſiam admittere, eumque Rectorem ejuſdem Eccleſiæ inſtituere cum ſuis juribus & pertinentiis univerſis, cæteraque expedire & peragere, quæ veſtro in hac parte incumbunt officio paſtorali, dignemini cum favore. In cujus rei Teſtimonium his præſentibus ſigillum meum appoſui: Datum primo die* M. *anno regni domini noſtri* Caroli *ſecundi Dei gratia*, Angliæ, Scotiæ, Franciæ & Hiberniæ, *Regis, fidei defenſoris, &c. viceſimo octavo, Annoque Domini* 1675.

1 Inſt. 120. b. F. Qu. Imp. 60.

And note that the King, or any other Patron, may Preſent by word of Mouth, or by Letter, and it is as good and effectual as one in Form.

How to proceed upon the Preſentation.
22 H. 6. 29 b. Doct. & Stud. l 2. c. 31. Dyer 327. p. 7. Rol. 2. 364. b. f

As ſoon as a Clerk has obtained ſuch Preſentation, it behoves him with all convenient ſpeed, and within ſix months after the Church became void by Death, Creation or Ceſſion of the laſt Incumbent, of which Avoidances the Patron is at his peril to take notice, or within ſix months after notice legally given to the Patron by the Ordinary of the Church becoming void by Deprivation, or Reſignation, to tender his Preſentation to the Biſhop of that Dioceſs within which the Church is, or to his Vicar-General, or in the Vacation, when there is no Biſhop of ſuch Dioceſs, to the Guardians of the Spiritualties, to whom the Law allows a reaſonable time to examine the abilities of the Clerk: For the Ordinary is not bound as ſoon as a Clerk tenders

What time the Biſhop may take to examine a Clerk.
Lindw. chap. *Cum ſecundum Apoſtolum.* 2 H. 7. 9. b.

tenders his Presentation to dispatch his busi-
ness*; but if he be busie about the affairs of his Church, he may make the Clerk to stay till he hath done, or may appoint him a convenient time to attend him for his approbation.

* Hob. 317.. 15 H.7.7.b.

† By the ancient Canons, the Bishop had two Months time to consider of the ability and disability of the Clerk; but by a Canon made in the time of King *James*, that time is abbreviated to one Month.

† Canon 95. *The Canon Law allows two Months, but the Common Law, which in all these Cases is to be preferred, allows only convenient time.*

Then if the Ordinary, &c. upon the examination of the Clerk, find him fit in all points, as above in the first Chapter is directed, then he admits him in these words, *Admitto te habilem, &c.* And thereupon the Ordinary Institutes him in these words, *Instituo te Rectorem Ecclesiæ Parochialis de* C. *& habere curam animarum: & accipe curam tuam & meam.* And this the Bishop may do as well out of his Dioceſs as within it; for as to this matter, it is not local, but follows the person of the Bishop whithersoever he goes. When the Bishop has instituted the Clerk, the Ordinary, or, &c. makes a Mandate under Seal to the Archdeacon of the place*, or to such other Clergy men as he pleases, to induct the Clerk. And it may be made † by the Dean and Chapter, but not by the Patron: for though by the Institution the Church is full against all persons, save the King, yet he is not compleat Parson till Induction; for by the Institution he is admitted *ad Officium* to pray and preach, yet he is not intitled *ad beneficium*, until he be formally inducted, which may be done by the deli-

Admission and Institution. Co. 4. 79. a. 32 H. 6. 28. b. 33 H. 6. 24. a. 38 H. 6. 15. a. Knowls verſ. Dobbins, P. 21 Jac. C. B. Carter verſ. Crosts, 27 El. C. B.

Who may make Induction.

* Callis verſus Launt.

† 11 H. 4. 9. b. Parson Denye's Case. H. 6 Jac. 10. 190. b. B. R. Plowd 528. b.

How Induction is to be made. Lindsey verſus Dodson, M. 9 Jac. C. B.

delivering of the Ring of the Church-door, or Latch of the Church Gate, or by delivery of a Clod or Turf, and Twig of the Glebe; but the moſt common and uſual way is, and therefore the ſafeſt, by delivery of the Bell-rope to the new inſtituted Clerk, and he tolling the Bell: And the Archdeacon, if he do it, is to take but 40 *d.* for doing of it.

33 H.6. 24.2. Lindwood c. *Item quia Archidiaconi, &c.*

And an Action of the Caſe will lye againſt the Archdeacon, if he refuſe or neglect to do his duty, or the Clerk may compel him to do his duty in the Eccleſiaſtical Court; and note that the Church is full againſt every body but the King, by the Inſtitution, but not againſt the King till Induction.

Hill. 45 Eliz. C.B. F.N.B. 74.H. 56.b. 26 H.8.3 per Knightly.

Now note, that the ſix months, within which the Patron is to preſent, are to be accounted by 182 days, and not by 28 days to the month.

Yelvert. 100. Co.6.61.b.62.a 2 Inſt.361.

And note, that the Clerk is to do many things more at the time of the Inſtitution, and after his Induction, to ſecure himſelf in his Living, which he will find in the ſixth Chapter following, to which I refer him, and wherein very great care is to be taken, that all things be duly performed and obſerved.

What's to be done after Induction.

There hath been ſome diſpute, whether the ſix months ſhall commence from the time of the death of the laſt Incumbent, or other Avoidance, or from ſuch time as the Patron could reaſonably have notice, conſidering the diſtance of place; and more particularly, where the Patron or Incumbent ſhould happen to be beyond the Seas at the time of the Avoidance.

From what time the ſix Months ſhall commence.

And

And there hath been a Canon, *quod tempus ſemeſtre non incipit verſus patronos, niſi à tempore ſcientiæ mortis perſonæ.* Rol. 2. 363. q.

But by the Common Law of *England*, I conceive the Patron is bound to take notice of the Death, Creation or Ceſſion, as aforeſaid.

And this is proved by the Regiſter, where in a Prohibition it's ſaid, *Quia ſecundum legem & conſuetudinem Regni noſtri* Angliæ *Epiſcopi, &c. beneficia vacantia per lapſum temporis ante ſex menſes vacationum eorundem tranſactos conferre non debent, nec conferre conſueverunt, aliquibus temporibus retroactis.* So that it appears by this Writ, that the time of the ſix months to collate by Lapſe commences from the Vacancy, and not from the Notice: But this muſt be intended of ſuch Avoidances, whereof the Patron is bound to take notice as aforeſaid. Regiſt. Orig. 42. *What time the Patron is to preſent.*

And it is alſo to be obſerved, that if the Patron do preſent his Clerk, which is refuſed by the Ordinary, becauſe he is illiterate, criminous, &c. there the Patron ſhall have no longer time to preſent but ſix months from the time of the Avoidance, where the Patron is bound to take notice of it, and ſix months from the time of notice, where the Ordinary is bound to give notice of the Avoidance. Kelw. 50. b. 34 H. 7. 21. a. 14 H. 7. 21. a. Dyer 227. p. 7. *The Patron preſents after Lapſe incurr'd.* 13 E. 4. 3. b. 11 H. 4. 80. a. Hob. 154. Hutton 24.

But note, that in all caſes, if a Church Lapſe to the Biſhop or Archbiſhop, and the Patron preſent his Clerk before the Biſhop or Archbiſhop have collated; the Biſhop, &c. is bound to admit the Clerk of the true Patron, and cannot take advantage of the Lapſe. 32 E. 3. 2. 11 H. 4. 80. 43 E. 3. 11. Lindwood. *Si aliquo evincente, &c. verba injuria.*

B. Plenarty 15 Doct. & Stud. li. 294.

Lapse. But the Canonists as should seem, hold the contrary; but the Common Law in this, as in other things, is to be preferr'd.

Dyer 277. p. 56.

But if the Bishop collate, and the Patron present before Induction, he comes too late.

Quære.

But the great Question is, if the Church Lapse to the King, and the Patron presents before the King takes advantage of the Lapse, Whether this shall avoid the Kings Title by Lapse? It is made a *Quære* by *Dyer*: But *Hobart* seems to be clear in it, that the King shall not have the benefit of the Lapse; but divers *Authorities are against him, *Ideo quære. Rolls* 2. 368. *b.* 27 *E.* 3. 84. *b. Co.* 7. 28. *Doct. & Stud. lib.* 2. *cap.* 31.

Dy. 277 p. 55. Hob. 152. Hut. 24. * Cro. El. 119. Cro. Jac. 216. Owen 3 & 5.

What time the Patron has to present. Screne *Regiam Majestatem*, 10. b. Chap. *Quoniam verbum devolvatur.*

There have been some Opinions amongst the Canonists, that a Lay-Patron should have but four months to present, but an Ecclesiastical person should have six months; and so it is said is the Law of *Scotland*; but the Common Law, which rules the point here, and with more reason, gives the Patrons in both Cases six months.

In the Cases of Deprivation and Resignation, where the Patron is to have notice before the Church can Lapse, the Patron is not bound to take notice from any Body but the Bishop himself, or other Ordinary; which must be given personally to the Patron, if he live in the same County; but if the Patron live in a Foreign County, then the notice may be published in the Parish Church, and affixed on the Church Door: And such notice must express in certain the Cause

Doct. and Stud. *ubi supra.* Co. 6. 19. b. Cro El. 119. Dyer 328. a.

Cause of the Deprivation, &c. and it must be *verè, propriè, personaliter, & non fictè*, by the Ecclesiastical Laws. There are several other ways that a Church may become void, of which the Patron is at his peril to take notice, as union, not payment of Tenths, &c.

Dyer 346. a. Co. 6. 29. b. Dyer 346. b. Harp. 3 & 4 El. Dyer 237. P. 29. 255. p. & St. 13 El. c. 12.

But no Lapse shall incur by any Deprivation *ipso facto* by the Statute of 13 *Eliz.* until six months after notice.

CHAP. III.

The Third Chapter shews, in what Case it is necessary that the Bishop have a Jure Patronatus, *and how the same is to be proceeded in, and what is the effect and fruit of the same.*

In what cases a Church shall be said litigious.

IF two Patrons present to one and the same Church by several Titles, the Church is become litigious; because the Bishop knows not which hath the very true and rightful Title to the same, and by consequence knows not which Clerk to admit: And I take it, the Church is not less litigious, though they both present the same person; because when the Bishop admits him as the Clerk of the one, he puts the other out of possession, and consequently to his

his Action; and the Bishop becomes a Disturber, if he who is put out of possession prove to have a better Title.

Where a Jure Patronatus is necessary, and how to be proceeded in.

Now the Bishop in this case, to secure himself, ought to award a *Jure Patronatus* to inquire of the Right; which is meerly an Inquest of Office in nature of a Writ *de proprietate probanda*, and does not at all * bind the Title or Right of the Party.

† 34 H.6. 38. b.*.

35 H.6.18.b. 19.a.*.

But it seems a question in our Books, Whether the Bishop is bound to sue the *Jure Patronatus* at his own cost and peril, or only at the Prayer, and at the cost of the party that prays it, or of both parties? But the better Opinion seems to be, and so is the Practice, that the same is to be sued at the prayer, and at the cost of one of the parties that prays it, or of both the parties if they joyn.

34 H.6.11.a.* Hob.317.* 34 H.6.38. 5 H.7.22.a. it is made a *Quære.*

Now whereas the Church may become litigious by double or plural Presentations, so it may become more litigious by the *Jure Patronatus*; for if two Patrons present, and each of them prays a *Jure Patronatus* by himself (as they may) and the one Jury gives a Verdict for the ones Title, and the other for the others Title; here the Bishop receives no direction at all, but the Church still remains litigious.

Callis Read. 3. 21 H.6.44.a.* *Quære.*

But here arises another great question, Whether the Bishop in this Case may let the Church Lapse, and collate? or whether he be not bound to admit one of the Clerks at his Election, or at his peril. Mr. Serjeant *Callis* in his Reading, was of Opinion, he might refuse both Clerks in this case, and suffer the Church to Lapse; and so

so is the Book in 21 *H.* 6. by *Newton* and *Paston. Tamen inde quære.*

And as a Church may become litigious by a *Jure Patronatus*; so it may become litigious after a *Jure Patronatus*, and a Verdict given for one of the parties; for if a *Jure Patronatus* be awarded, and a Verdict given for one of the Parties, and before the Patron presents, for whom the Verdict was given, and prays admittance of his Clerk (as he ought to do, before the Bishop is bound to admit his Clerk) another presents; here the Church is become litigious *de novo*, and the Bishop in this case, as it seems, may award a new *Jure Patronatus* to determine the right of Patronage between the new and the old Patron, for whom the Title was found in the former. 41 H. 6. 45. a.

But some have thought, that though the Church be not litigious by double or plural Presentations, yet the Bishop, if he doubt of the Patrons Title that presents, may award a *Jure Patronatus*, and inquire of such Patrons Title, and by that means prevent the surprise that may happen to other pretenders by sudden admission of the Clerk; and in case the Right of Patronage be found for † a Stranger, the Bishop may admit his Clerk. 21 H. 6. 44. *Callis* Reading 29. Hob. 318. †34 H. 6. 44 a.

But it seems, that if the Bishop admit the Clerk that is presented before the Church becomes litigious by a second Presentation, the Bishop acquits himself thereby from being a Disturber; but by this means the Bishop may do great wrong in surprizing other Patrons that have right: And the Law doth not so hasten the Bishops proceeding, but Hob. 317.

that

that, as hath been ſaid, he may take convenient time to examine the Clerk, that other pretenders may take notice of the Vacancy.

Hob. 317. But though the Church, by any of the means aboveſaid, be become litigious, yet I think there is no doubt, but that the Biſhop may admit either Clerk without a *Jure Patronatus*; but then he doth it at a double peril; for if the Patron, whoſe Clerk he admits, have not a good Title, or having a good Title, do not make it out in a *Quare Impedit*, or other Action brought for the Church, the Biſhop will be made a Diſturber.

And the Biſhop may thereby do great wrong to the true Patron, by putting him out of poſſeſſion of his Church, and forcing him to an Action that may turn much to his charge and trouble, beſides great damage to his Clerk, and oft to the loſs of the Advowſon; therefore Biſhops ought in this caſe to be very tender to proceed according to Juſtice. But if the Patron fear any foul play from the Biſhop, and be not reſolved of his Clerk, he may enter a Caveat with the Biſhop, not to admit the Clerk of any other; and though this do not ſo bind up the Biſhop, that he cannot * admit the Clerk of another perſon, yet if the Biſhop will preſume to do it without a *Jure Patronatus*, he may be puniſhed by his Superior.

Rolls 2.361. m.3. *Contra Poph. 133.

Seiomor. Zouch verſus Evelque Peterborough & al. T.38 Eliz.B.R. But in caſe the Biſhop delay to admit the true Patrons Clerk, he may ſue a *Duplex Querela* out of the *Arches*, to command the Biſhop to admit his Clerk; and then if the Biſhop do not admit the Clerk within nine days,

days, or the ſpace aſſigned by the *Duplex Querela*, or return a legal cauſe why he does it not, the *Metropolitan* may admit the Clerk in the Ordinaries default.

If the Archbiſhop inſtitute in the Biſhops default, and the Biſhop appeal after Induction, a Prohibition lies. Bendl. 293. M. 10. 2 Roll 293. m. 10.

But the Biſhop may return, if the truth be ſo, that the Church is litigious, and that he cannot admit the Clerk till the Right be determined in a *Jure Patronatus*, which will excuſe him.

But the ſureſt and ſafeſt way in this caſe is, if the Biſhop delay the true Patron, immediately to ſue a *Quare impedit*, and thereupon a *Ne Admittas* to the Biſhop; and then if the Biſhop, after the receipt of ſuch Writ, admit the Clerk of any other perſon without a Verdict in a *Jure Patronatus*, the true Patron may have a Writ called a *Quare Incumbravit* againſt the Biſhop, and may therein recover the Preſentment with damages. F.N.B. 37. f. F.N.B. 48. g h. Ibid. l. 2 E. 3. 3. a.

And it ſhould ſeem this Writ lies, in caſe the Biſhop admit the Clerk of the adverſe Patron, notwithſtanding he hath obtained a Verdict in a *Jure Patronatus*; but this muſt be intended, I conceive, where ſuch Patron is Defendant in the *Quare Impedit*. F.N.B. 48. h.

And note, That a Caveat entred in the life of the former Incumbent, is of no force. Cr Jacobi 463.

And note, That by a Canon made in the time of King *James*, the Patron or Clerk cannot have a *Duplex Querela* till 28 days are expired from the time the Clerk was preſented. Can. 95.

And

How far the Bishop is bound by a Verdict in a Jure Patronatus.

And it seems likewise, that the Bishop is not so bound by the Verdict in a *Jure Patronatus*, but that he may admit the contrary Clerk, if he see cause, or be satisfied he has the better Title; but this seems to be against Justice, and the true intent of the Law.

34 H. 6. 11. b. Hob 318.

And Sir *Henry Hobart* was of Opinion, That an Action of the Case lies against the Bishop by the Patron that is so disturbed, if in a *Quare Impedit* he prove to have the better Title, and recover his damages by reason of the delay and trouble the Bishop hath thereby put the Patron to; but then the Bishop must not be made a Defendant in the *Quare Impedit*: But of this *Quære*.

Quære.

The manner of proceeding in a Jure Patronatus.

Now the manner and form of proceeding in a *Jure Patronatus* is thus: The Bishop issues forth a Commission under his Seal to his Chancellor, or some other persons, whom he pleases, that are expert in the Canon and Ecclesiastical Laws: In which Commission (since the Title of Patronages is determinable at the Common Law) it were not amiss to joyn some common Lawyer of eminent Learning and Integrity; and these Commissioners are by him authorized to summon a *Jure Patronatus*, and to proceed to the determination thereof, and then the Commissioner or Commissioners so authorized issue out a Mandate to some Officer of their own to summon a Jury, which must be one half Clerks, and the other half Laymen; and if they refuse, being duly summoned, to appear, the Commissioners may proceed against the Clergy-men by Sequestration,

22 H 6. 29. b.

ſtration, and the Lay-men by Eccleſiaſtical Cenſures to compel an Appearance.

When a full Jury of Clergy-men and Laicks appear, which muſt be ſix of each at leaſt, the Commiſſioners are to ſwear firſt a Clergy-man, and then a Lay-man, till Twelve be ſworn at leaſt of the Jury: But the Commiſſioners may ſwear a greater number than Twelve of the Jury, if they pleaſe, or ſee cauſe, ſo always that there be an equal number of Laymen and Clergy-men ſworn in the whole.

The Points inquirable by this Commiſſion are five: *Callis* Reading 29.

1. *Si Eccleſia vacat, & quomodo vacavit?*
2. *Quis Patronus ultimo præſentavit?*
3. *Quis eſt verus & indubitatus Patronus?*
4. *Quis præſentare debet ad Eccleſiam nunc vacantem?*
5. *De Idonitate perſonæ præſentatæ.*

The Points inquirable in a Jure Patronatus

Vide Lindwood *per noſtram Provinciam verbo Inquiſitionem.*

But the Civilians vary in their Articles at pleaſure.

But the main and chief Points are the third and fourth, the laſt reſting wholly in the Judgment of the Biſhop.

After the Jury is ſworn and charged, the Council and Advocates of both parties are to ſhew their reſpective Clients Titles, and produce their Evidences to prove the ſame. And after the Evidence is given on both ſides, and Counſel fully heard, the Jury may give their Verdicts forthwith, or the Commiſſioners may give them time to con- 21 H. 6. 45 a.

ſider of their Evidence, and may aſſign them another time and place for the giving their Verdict, as in other Inqueſts of Office; but I like much better (to avoid being tampered with) that they give their Verdicts forthwith before they part, unleſs new Evidence be expected.

22 H.6.29.b.

The effect of a Jure Patronatus.

The Effect of this Suit is no more but for the Biſhops ſecurity, that he may avoid being a Diſturber; for the Verdict of this Jury is a ſufficient warrant for the Biſhop to admit and inſtitute his Clerk, for whoſe Title the Verdict is given, and the Biſhop for ſo doing ſhall never be made a Diſturber, though the other Patron againſt whom the Verdict is given, ſhall after recover in a *Quare Impedit*, or other Action.

What's to be done, if the Jury will not give a Verdict. 35 H.6.18.b. &c.

But ſuppoſe the Jury will not agree of their Verdict, and the one half be for the one Patron, and the other half for the other Patron; or, that they refuſe to give any Verdict at all; or if they find a ſpecial Verdict, as I ſuppoſe they may; the Biſhop in all theſe Caſes is left to proceed at his peril, as though no *Jure Patronatus* had iſſued at all; or perhaps in this caſe he may diſcharge the Jury, and ſummon a new *Jure Patronatus*.

34 H.6.12.a. *Callis* Read.29. *What's to be done where Coparceners, Joynt-tenants, or Tenants in Common preſent ſeverally.*

And it is to be obſerved, that after a Verdict found in a *Jure Patronatus* for the Patron, the Patron muſt again requeſt the Biſhop to admit his Clerk; otherwiſe, if the Church Lapſe after ſix months, the Biſhop may collate.

But

But if two Coparceners preſent ſeveral Clerks by the ſame Title, this doth not make the Church litigious, but the Biſhop is bound to admit the Clerk of the elder Siſter: But this is to be intended where the eldeſt Siſter preſents alone, and not joyntly with any other of the Co-heirs.

21 H.6.45.a. per *Aſcue.* 34 H.6.40. 5 H.7. 8. cauſa 16.q.7. conſiderandum eſt. 11 H.4.58. 33 H.6.32. 1 Inſt.186.b. Doct.& Stud. 115.b.

But if two Joyntenants or Tenants in Common preſent ſeveral Clerks, that makes not the Church litigious; for the Biſhop may admit the Clerk of which he pleaſes: Or if they do not agree and joyn in preſenting a Clerk within the ſix months, the Biſhop may collate.

Kite verſus Eveſque Briſtol, P.7 Jac C.B. 1 Inſt.186.b. 6 Ed.4.10.b. 34 H 6.40.b. Ubi ſupra.

And note, That the Biſhop needs not to make Commiſſioners to enquire *De Jure Patronatus*; but he may, if he pleaſes, do the ſame himſelf: and therefore, if his Commiſſioners neglect to do their duties, it ſhall not excuſe him, becauſe it was his folly to name ſuch Commiſſioners. But the Opinion of the Civilians ſeems otherwiſe: For they ſay, that the party ſhall name the Commiſſioners; and if they neglect their duties, it ſhall be at the peradventure of the party that names them. And though they make a falſe return, or no return at all, it ſhall excuſe the Biſhop; and the party grieved is left to his Action againſt the Commiſſioners.

If the Commiſſioners neglect their duties. 22 H.6.30.a.

And, as has been ſaid, the Verdict in a *Jure Patronatus* does not bind the adverſe party's Title, though it may be ſome evidence for him whoſe Title is found to be the beſt.

Verdict does not bind. 21 H.6.45.a. 34 H.6.38.b.

22 E.4. 66. 13 H.8.12. 35 H.6.62.

If there be three Joyntenants of an Advowſon, the Church whereof becomes void, it has been a queſtion, if two of the Joyntenants may preſent the third, *Dyer* 304. b. 14 *H.*8.2. *Moor* 4.p.14. *Bendl.* 34.

CHAP. IV.

Shews how the Law ſtood concerning Pluralities before the Statute of 21 H. 8. cap. 13. *Who are qualified within that Law to have Pluralities; and how qualified perſons ought to behave themſelves in taking the ſecond Livings, ſo that the former may not be void.*

What a Plurality is.

A Plurality is, where one and the ſame perſon obtains two or more Spiritual Preferments with Cure of Souls, or without; againſt which there have been ſeveral Canons, and they have been always diſcountenanced at the Common Law, and ſeveral Complaints have been made againſt them in Parliament; yet the Pope held them up by his Diſpenſations. How agreeable theſe Diſpenſations were to God's Service; nay, how prejudicial they have been to the advance of the Chriſtian Religion, and are, I leave others to judge; it being no part of my Undertaking. And though I find

Co.4.90.b. Co,Mag.Chart. 626. Vide *the Records there cited.*

find a great Judge of this Nation defending of them; yet I find a Canon in the General Council of *Lateran* against them, in the Year 1215. in these words, *Statutum est quod, quicunque receperit aliquod beneficium habens curam animarum annexam, si prius tale beneficium obtinebat, eo sit jure ipso privatus, & si forte illud retinere contenderit, alio etiam spolietur, Is quoque, ad quem prioris spectat donatio, illud post receptionem alterius conferat cui merito viderit conferendum.* Hob. 149. Concil. tom. 4. 221. ca. 29. Concil. Lat. 4. 1215. cap 29. Concil. Lat. 3. 1180. ca. 13. *Canon against Pluralities.* Co. 4. 79. a. Clement. tit. 2. cap. 3. gloss. *Beneficia quæ requirunt residentiam sunt incapabilia.*

And by another Council there held under *Leo* the 10th, *Anno Dom.* 1123. it is further decreed, that *Dispensationes autem ad plura * incompatibilia ultra duo, nisi qualificatis juxta formam juris communis non concedantur, nisi ex magna & urgente causa.* * Can. 5. *Note, Those Livings are said to be incompatible that have Cure of Souls, or are forbid to be held together by some Canon.*

And now let me tell you the fruits of Pluralities out of another Council, which is delivered in these words: *Res ipsa loquitur, plura beneficia, potissimum quibus cura animarum subnissa est, non sine gravi Ecclesiarum damno ab uno obtineri; cum unus in pluribus Ecclesiis rite officia persolvere, aut rebus earum necessariam curam impendere, nequeat.* Tom. 5. 368. cap. 64. *The effect of Pluralities.*

Yet notwithstanding the Canonists allow of Pluralities in six Cases: Co. 4. 79. b. Clement. l. 3. tit. 2. ca. 3. Gratian. causa 21. q. 1. Mag.

1. When the Churches are so poor, that either by it self will not maintain a Minister.
2. In such cases as the Bishop dispenses with them.
3. Where there is a scarcity of Clerks.

4. Where the Clerk has one by Title, and the other by *Commendam*.
5. By Grant from the Pope.
6. Where two Churches are united, or depend the one upon another.

Which *Hostiens.* renders thus:

Ecclesias plures nullus de jure tenebit.
Dependens, tenuis, rarus, vel gratia Papæ.
Utilitas urgens, & commendatio justa.

Conc. Lateran. sub Alex. 4. 1180.

But, as I take it, the Council of *Lateran* reduces all these qualifications to the Pope's Dispensation. The Canon is as follows:

Can. 29. Vide Decretals Gregor. de Præbendis, &c. Lib. 3 tit. 5. cap. ad hæc.

Cum fuit in hoc Concilio prohibitum ut nullus diversas dignitates Ecclesiasticas, & plures Ecclesias Parochiales reciperet contra Sacrorum Canonum instituta. Hoc idem in personalibus decernimus observandum, addentes, ut in eadem Ecclesia nullus plures dignitates habere præsumat, aut personatus, etiamsi curam non habeant animarum. Circa sublimes tamen & literatas personas, quæ majoribus sunt beneficiis honorandæ (cum ratio postulaverit) per Sedem Apostolicam poterit dispensari, &c.

Dyer 273. p. 35.

And upon this Canon, *Goodman*, Dean of *Wells*, was deprived of his Deanery, because he had accepted the Prebend of *Wiveliscome* in the same Church, in the time of *E.* 6. And note, These Presentments were not within the Statute of *Pluralities*, but are left as they were upon the Canon Law; for the Statute only extends to Livings with cure of Souls.

I might enlarge much more upon this Subject; but it being collateral to what I deſign, this Taſte ſhall ſerve. And if any body deſire further ſatisfaction upon this Subject, I commend him to the Hiſtory of the Council of *Trent*; where he will find, That by the greater and better Opinion of that Council, Reſidence by him that hath a Preferment in the Church with Cure of Souls is of Divine Right; and that therefore the Pope had no power to diſpenſe with Non-reſidence, the conſequence of which is, That it is againſt Divine Right for any to take more Benefices than one with cure of Souls, becauſe the ſame perſon cannot be reſident in two places at one and the ſame time, to diſcharge his duty; which requires a conſtant attendance. Conc. Trident. 496.

But as the Pope by ſtratagem made the endeavours of all the good Men in that Council ineffectual, ſo by his frequent Diſpenſations to take Pluralities without number or meaſure, he made the Canons of the Church of no other effect than to increaſe his own Revenue by Diſpenſations. More 119.

And it ſhould ſeem the Council of *Lateran* was received and approved (as to that Point) in this Kingdom, and the Law was always taken, that he that had one Living with cure of Souls, and without Diſpenſation accepted another with cure of Souls, made the firſt void: So that the Patron of the firſt Church might preſent a new Clerk, and needed not to ſtay till the former Clerk ſhould be legally deprived. *Acceptance of a ſecond Living makes the firſt void.* 24 E. 3. 29. b. 25 E. 3. 49. a. 55 b. 11 H. 4. 60. a. per Hill. 14 H. 8. 17. a.

But in this case the Church doth not lapse till the end of six Months, to be accounted from the time the Patron hath legal Notice of the Vacancy from the Bishop; but after Induction, the Patron, as it should seem, is bound to take Notice at his peril: And as to all others, but the Patron, the Church remained full till Induction into the second Living; and so are all the Books that seem *prima facie* to differ, reconciled.

Co.4.95.b
44 E.3.22.a.
9 E.3.22.a.
10 E.3.1.
14 H.7.28.b.
14 H.8.17.a.
F.N.B.34.L.
15 E.3.9.
11 H.4 37.
Cro.Car.357.

Several Acts to restrain the Pope.

27 E.3.cap.1.
3 R.2.cap.3.
7 R.2.cap.12.
2 H.4.cap.4.
38 E.3.cap.1.
16 R.2 cap.5.
6 H.4.cap.1.
25 E.3. *of Provisions*; and
27 E.3.cap.1.
6 H.4.cap 1.

But the Parliament of *England*, that in all Ages made bold with his Holiness, and to restrain the exorbitances of the Pope and Court of *Rome*, as the Reader may see, if he pleases to satisfie himself by the several Acts of Parliament mentioned in the Margent against Provisions suing at *Rome*, impeaching Judgments given at the Common Law, Aliens being Beneficed within this Realm, priviledging Religious Orders from payment of Tythes, and many other things; and I cannot forbear to observe to the Reader the boldness of the Parliament in the sixth year of *H.* 4. with his Holiness, where they restrain the giving of exorbitant and unjust Fees for the Investitures of Bishops.

The Act begins thus:

Whereas there is a damnable Custom in the Court of Rome, *to take more for the Investiture of Bishops, &c.*

Certainly these brave Parliamenteers never expected his Holiness's Indulgence or Pardon, this seeming a sin as high as that against the Holy Ghost, to charge their Holy

Holy Father with a damnable Custom in his Court, to use Extortion and Symony.

And the Council of *Lateran*, under *Leo* the 10*th*, *An. Dom.* 1523. dealt almost as plainly with his Holiness, speaking of *Symony*; that Council has it, *Ut nefariæ Simoniæ labes & pestis non solum* * *à* Romana *Curia, sed etiam ab omni Christiana ditione, in perpetuum dejiciatur, constitutiones per antecessores nostros etiam in sacris Conciliis nostris editas contra hujusmodi Simoniacos, innovamus: easque inviolabiliter observari præcipimus.* Can. 8. * Nota.

But to return: I say the Parliament, to prevent the mischiefs of these Dispensations, made a Law in the twenty first year of *H.* 8. *That if any Person or Persons, having (that is, being Instituted) one Benefice with Cure of Souls, being of the yearly value of eight pounds or above, shall accept and take any other with Cure of Souls, and be Instituted and Inducted into the possession of the same, that then, immediately after such possession had thereof, the first Benefice should be void.*

And that it should be lawful to every Patron having the Advowson thereof to present another, and the Presentee to have the benefit of the same, as though the Incumbent had died or resigned, and that any licence, union, or other Dispensation contrary to that Act should be void.

The Act against Pluralities. 21 H. 8. c. 13. Co 4. 79. b. *This is a confirmation of the* Canon, *where the Living is above* 8 l. per annum, *but does not annul the Canon Law in other cases; so that the effect of this Law is, that it takes away Dispensations in this case, but leaves the smaller Livings, as they were before.*

If

If this Act had gone no further, it had been an excellent Law: But there are so many qualifications in this Law that wholly defeat the benefit of it, since the Nobility are grown so numerous as they are at this day; so that the grievance is now become as great as ever, if not greater, and deserves a new and stricter Reformation; for almost all the greatest and best Livings of the Kingdom are now held by Pluralists, and served by mean Curates.

But now let me return to the Act, and observe:

That this Act has only provided a Remedy, where the first Living is of the yearly value of Eight pounds or above, which must be understood according to the valuation taken in the twenty ninth year of King *Edward* the First, till the twenty sixth of *Henry* the Eighth; and after that time, according to the valuation then returned into the *Exchequer*, and now made use of in the *First-fruits* Office. * But many former Opinions and Books have been, that the Valuation ought to be according to the true value. *Ideo Quære.*

This point was moved in *Shute* and *Higden*'s Case, *Vaughan* 130. but was not setled, so it remains a *Quære* still. Vide *Vaughan*, *Shute* versus *Higden.*

But in case the first Living be under the yearly value of Eight pounds, or a *sine cura*, then the party may accept a second, as he might have done before this Act, with a Dispensation, which he needs not now to go to

Cro. 6. ca. 45. P. 19 Jac. C. B. Eveſque Durham verſus Eveſque Peterborough. Roy verſus Eveſque Br. & Handly T. 44 El. B. R. rot. 564. *The Court was divided.*

* Dyer 237. p. 29. Cro. Eliz. 853. *Quære.*

Puſhy verſus Smith. T. 40 Eliz. rot. 123. Noy 38.

to *Rome* for, although he be not qualified within this Law.

But I conceive, if an Incumbent of a Living under the Value, take a ſecond Living without a Diſpenſation, that the firſt Living is void by the Canon Law, though it be not ſo by the Statute.

But by this Act there are ſeveral perſons qualified to have and retain Pluralities; and thoſe are of three ſorts: *Who are qualified to have Pluralities.*

1. By Service.
2. By their Birth. And,
3. By Dignities.

And firſt of thoſe that are qualified by Service.

1. All the Kings Chaplains, (which are not of his Council) and of the Queen, Prince, Princeſs, and Brethren and Siſters, Uncles and Aunts of the King. *Qualifications.*

2. Eight Chaplains of every Archbiſhop.

3. Six Chaplains of every Duke.

4. Five Chaplains of every Marqueſs and Earl.

5. Six Chaplains of every Biſhop.

6. Four Chaplains of every Viſcount.

7. Three Chaplains of the Lord Chancellor, and of every Knight of the Garter and Baron.

8. Two Chaplains of every Dutcheſs, Marchioneſs, Counteſs and Baroneſs, being Widows.

9. Two

9. Two Chaplains of the Treaſurer and Comptroller of the King's Houſe; the King's Secretary, the King's Almoner, Clerk of the Cloſet, and Maſter of the Rolls.

10. One Chaplain of the Chief Juſtice of the *Kings-Bench*, and Warden of the *Cinque-Ports* for the time being.

All theſe, in reſpect of their Services, may purchaſe Licenſe or Diſpenſations, and take, receive and keep two Parſonages or Benefices with cure of Souls, notwithſtanding this Act.

But thoſe of the King's Chaplains, that are ſworn of the King's Council, may purchaſe Licenſe or Diſpenſations, and take, receive and keep three Parſonages, or, &c. with cure of Souls.

Qualification by Birth.

2. The ſecond Qualification is by Birth; that is, the Brothers and Sons of all Temporal Lords and of Knights, born in Wedlock, may purchaſe Licenſe or Diſpenſations, and take, receive and keep two Parſonages, &c. with cure of Souls.

In which Qualification it is to be obſerved, That no proviſion is made for Baſtards, nor for the Sons of Biſhops, Abbots, Priors, &c.

And Note, In this caſe the Sons and Brothers of Knights, have greater priviledge than the Sons and Brothers of Baronets.

3. The

3. The third Qualification is of certain perſons dignified in the Univerſities; and of that ſort are all Doctors and Bachelors of Divinity, Doctors and Bachelors of the Canon Laws, which ſhall be admitted to any of thoſe degrees by any of the Univerſities of this Realm, and not by Grace only: All which may purchaſe Licenſes or Diſpenſations, and take, receive and keep two Parſonages, &c. with cure of Souls. *Qualification by Dignity.*

And in this Act there is a Negative Proviſo to this effect, That no perſon or perſons to whom any number of Chaplains, or any Chaplain by the proviſions aforeſaid is limited, ſhall in any wiſe by colour of the ſame proviſions, advance any Spiritual perſon or perſons above the number to them appointed, to receive or keep any more Benefices with cure of Souls, than is above-limited. Proviſo, *That above the number ſhall not be avanced.*

There is another Proviſo, That the Chaplains ſo purchaſing, taking, receiving and keeping Benefices with cure of Souls, as aforeſaid, ſhall be bound to have and exhibit, where need ſhall be, Letters under the Sign and Seal of the King, or other their Lord or Maſter, teſtifying whoſe Chaplains they be, or elſe not to enjoy any Plurality of Benefices by being ſuch Chaplains. Upon this Clauſe ſome queſtion has been made, whether a Chaplain can be retained within the meaning of this Law by parol; and it ſeems he may, ſo that they have ſuch Teſtimonial, when they pray Proviſo, *That they muſt have Teſtimonials.*

Roy verſus Saveacre, T. 28 *El.* C. B. rot. 1130. Hughes p. 41.

Roy verſus Eveſque Lincoln, & alios. T. 31 *El.* rot. 725. C. B.

pray their Diſpenſation; but the ſafeſt way is to have it in Writing, and it muſt be under Hand and Seal.

Now having ſhewed what perſons are qualified within this Statute, I will in the next place ſhew how the Clerk, that would have the benefit of his qualification within this Law, ought to proceed in the taking a ſecond Living, ſo that the firſt may not be void, which is in this manner:

How to proceed in the taking of a ſecond Living.

The Parſon that falls within any of the Qualifications within this Law, which makes him capable of a Plurality, and having obtained a Preſentation to a ſecond Living, muſt carry his Teſtimonial or Retainer under the Hand and Seal of his Lord or Maſter, to the Maſter of the Faculties, who is to make out his Diſpenſation or Licence to accept the ſecond Benefice; which being obtained, he muſt next have it confirmed under the Great Seal of *England:* And after he hath thus obtained his Diſpenſation, and has it confirmed under the Great Seal, then, and not before, he is to apply himſelf to the Biſhop of the Dioceſs where the Living lies, for his Admiſſion and Inſtitution.

It ſhould ſeem that the King might diſpenſe with a Plurality at Common Law. 11 H.4.60.b.

Stat.25 H.8. cap.21.

But theſe things taking ſome time in the doing, I adviſe the Clerk immediately to enter a Caveat with the Biſhop and his Vicar-General, and carry his Preſentation to the Biſhop, and acquaint him with it, and with the reaſon of his delay, leſt he ſhould be ſurprized.

Though

Though by the Letter of the Act, the first Living is not void until Induction into the second Living; the words whereof are as follow: [*If the party be Instituted and Inducted in possession of the second Living, that then the first shall be void.*] Yet to avoid the great inconvenience that otherwise would ensue, it has been held that the first Living is void upon the bare Institution into the second Living; and so it should seem the Law was before the making of this Act, where the party had no Dispensation.

First Living void by Institution into the second.

Co. 4. 79. b. Hob. 166.

And it is to observed upon this Law, That in case any Lord, or other person, whose Chaplains are qualified within this Law to have two or more Livings incompatible, do retain his full number of Chaplains, and after, one or more above his number; that in that case the Supernumerary Chaplains, that were retained after such Lord, or other person, had retained his full number allowed by the Statute, are not qualified by this Law to have Pluralities of Livings, although the Supernumerary Chaplains be preferred before the other that were first retained.

Which Chaplains shall be qualified, where above the number is retained.

More 561. Co. 4. 90. a. & 118. a. R. versus Eveque Glouc. & Saveacre. Anderson 200.

But if a Chaplain qualified within this Law be legally Inducted into a second Living with a Dispensation, as he ought, although his Master be attainted, degraded, or removed from his Office, yet he shall retain his Plurality during his Life.

Dyer 312. p. 88.

But

The Maſter dies, &c. before preferment. Co. 4. 117. b.

But if one be retained Chaplain to any Lord, or other perſon, whoſe Chaplains are qualified within this Law; and his Maſter dies, is attaint, degraded or diſplaced before his Chaplain be preferred to a ſecond Living; or if ſuch Lord or other perſon diſcharge ſuch a Chaplain, (as he may) in all theſe caſes the Chaplain loſes his Qualification to have Plurality of Livings incompatible.

Co. 4. 118. b. *The Miſtreſs marries.*

But if a Dutcheſs, Marchioneſs, Counteſs or Baroneſs do retain a Chaplain, and after marries, this ſhall not take away the Qualification of ſuch a Chaplain, but that he may have Plurality of Livings * incompatible within this Law, as he might have done before.

* *That is, having cure of Souls.*

Co. 4. 119. a.

And if ſuch Dutcheſs, &c. retains Chaplains, and after marries, and after becomes a Widow again; yet the firſt retainer ſtands good, and was not countermanded by the Marriage or Death of the Huſband.

And Note, That there is a *Proviſo* in this Act, that though a Dutcheſs, Marchioneſs, Counteſs or Baroneſs, do marry an Huſband under the degree of a Noble-man or Baron; that yet nevertheleſs ſhe may retain two Chaplains, which ſhall be qualified within this Law.

What preferments are not within this Law.

And it is declared by this Act, That Deanaries, Arch-Deaconries, Chancellorſhips, Treaſurerſhips, Chaunterſhips, or Prebendaries in any Cathedral or Collegiate Church, or any Parſonage that hath

a

a Vicar endowed, or any Benefice perpetually impropriated, are not to be eſteemed Benefices with cure of Souls within this Act.

And if any Duke, Lord, or other perſon, whoſe Chaplains are qualified within this Law, ſhall have a double Capacity to qualifie his Chaplains; as if a Duke, &c. be made Lord-Warden of the *Cinque Ports*, or a Baron, Maſter of the Rolls, Knight of the Garter, &c. In all theſe caſes ſuch Duke, Baron, &c. can but qualifie his number of Chaplains, according to his beſt Qualification only. Co. 4. 118. a.

Chaplains retained in the life of the Father.

And if the eldeſt Son of a Duke, Marqueſs, &c. retain Chaplains in the life-time of his Father, who after dies, and the Honour deſcends upon ſuch Son; yet this Retainer will not qualifie his Chaplains to have Pluralities within this Statute, becauſe at the time of the Retainer he was not capable to qualifie them. *Et quod ab initio valet, tractu temporis non convaleſcit.* Co. 4. 90. a.

Lord diſcharges Chaplains after they are preferred.

If a Duke, Marqueſs, &c. retain his full number of Chaplains which are advanced, and then diſcharge them; yet he cannot, during their Lives, qualifie any other within this Statute. Co. 4. 90. a.

A greater number of Chaplains retained together.

But if a Duke, Marqueſs, &c. that has power within this Act to qualifie Chaplains, at one inſtant of time retain his double number of Chaplains, or any ſupernumerary Chaplains; in that caſe, thoſe only ſhall have the benefit of Qualification that are Co. 4. 90. a. Dyer 312. p. 88.

first preferred. *Quia in æquali jure melius est conditio possidentis.*

Co. 4. 79. b. Dyer 312. p. 88. If one that is qualified within this Statute take a second Living incompatible, and be Instituted or Inducted into the same before he have obtained a Dispensation, the first is void; though *Dyer* makes a *Quære* of it.

This Law is not dispensable. And note, that it hath been Resolved, That the King himself cannot dispense with this Law. *Dyer* 351. *p.* 2. 327. 2. *p.* 4 *Trin.* 18 *El. C. B. Coxes Case.*

Vaughan's Rep. 129. Shute versus Higden. If a Parson have a Living under the value of Eight pound, and take another without Dispensation, the first is void; and if he donot read the 39 Articles, or do not do the other things prescribed in the sixth Chapter of the first Book, whereby the second living is void; yet that helps not, but that the first Living is void, and the Patron may present; but no Lapse will incur until a legal Deprivation and Notice to the Patron.

A Pluralist neglects to subscribe or read the 39 Articles. Dyer 377. b. Co. 5. 102. Hob. 157. But if one that is qualified within this Law to have two Livings incompatible, shall neglect at the time of his Institution to subscribe to the 39 Articles of Religion, though he be after inducted into the second Living; yet this shall not make the first void, for his Institution and Induction were both void *ab initio:* But if such Parson had subscribed the Articles at the time of his Institution, and had after neglected to read them within two Months after his Induction into the second Living this makes both

Livings

Livings void (as was lately adjudged) because for two Months he was compleat Parson of the second Living. Vaughan 129, &c.

And if a Parson, &c. that is qualified within this Statute to have Plurality of Livings incompatible, be made a Bishop, his Qualification ceases, so that after he cannot take two Benefices incompatible by force of such Qualification; but if he had two Livings before he was made Bishop by qualification and dispensation within this Statute, he may retain them by *Commendam*: And although he were the King's Chaplain, it alters not the case; for by the acceptance of a Bishoprick, he ceases to be the King's Chaplain within this Law. Hob. 157.

And if a Parson have one Living incompatible, he cannot obtain another with Cure to be united, unless he be qualified and have a Dispensation, but that first will be void. Parsons Law, l. 2. 14 & 15. *Uniting a Living is a Plurality.*

Mr. *Hughes* in his *Parsons Law* puts two Cases, which he is of Opinion are out of the danger of this Law. The first is, where there is a Parsonage and Vicarage endowed, and the Parson without Dispensation or Qualification accepts the Vicarage: And he conceives, That notwithstanding that these are two several Advowsons and Benefices, and that several *Quare Impedits* may be brought of them, and that several Actions are maintainable by the Parson and Vicar concerning their Possessions; that yet nevertheless, the presenting of one person to both is no Plurality within this Statute or *Parson and Vicar of the same Church*, Si, &c.

the Canon; because the Parson and Vicar have both but one cure of Souls. Besides, there is a *Proviso* in the Act, *That no Parsonage with a Vicarage endowed, shall be accounted a Benefice with cure of Souls within that Act.*

Two Rectories in one Church.

But his other Case seems more doubtful, and it is put where a Church has two Rectories, and each has cure of Souls *per se*, and are incompatible, and one person obtains both these Livings without Qualification or Dispensation.

This Case he conceives to be both out of the danger of this Act and the Canon:

1. Because it is not in *pluribus Ecclesiis.*

2. When there are several Advowsons in one Church, neither Parson hath the whole cure of Souls; and the words of the Statute are, *Having no Benefice with the cure of Souls of the value of Eight pounds, takes and accepts another Benefice with cure of Souls, &c.*

But here the Church is one and the same, and the cure of Souls the same; and therefore, as he conceives, neither within the danger of the Statute or Canon: But in a private Report that I have, this very point came in question in the latter end of the Queens time; and the Reporter says, That *Walmesly* and *Beaumont* were of Opinion that this Case was within the Statute: But *Anderson* doubted, and seemed to incline to the contrary. *Ideo quære inde.*

Cooper versus Beauchampe. P. 37 El. C. B.

By

By the Resolutions of the several Cases before-mentioned it is worth observation, how the Judges of the Common Law have endeavoured to advance this Law, and restrain the Qualifications: And yet when all is done, this Law produces little more effect, than the transferring the power of Dispensations in this case from the Pope, and scattering it amongst the Nobility and others: And how many Pluralists are there in *England*, that hardly see either of their Livings in a year? So that generally the best Livings in the Kingdom are served with poor Curates, and no Hospitality kept: A thing worth the Consideration of a Parliament.

There is now a Thousand Qualifications at least in England *by Service, besides the Chaplains of the King, Queen, Princes of the Blood, and Dowagers, and probably as many more by Birth and Dignities; and there are about Four thousand Three hundred Livings in* England *of Ten pound* per annum *in the Kings Books, and upwards; and it is not the least Livings the Pluralists catch at, though at first they crept into the Church where Livings were so small they were not able to maintain a Minister; and, if the 41st Canon of King* James *were observed, many Mischiefs in this case might be prevented.* Co. 2 Inst. 627.

And it is to be hoped, that our Noble Lords, when they consider the great damage the Church suffers by Pluralities; the many poor Souls that are neglected, in danger to perish; the great discouragement it is to Learned Men, when they see many of meaner worth enjoy two Livings apiece; besides Prebends, Deanries, *Sine Cura's*, *&c.* and the abler and better Man, for want of Friends, is never able to rise higher than a poor Curacy of Twenty or Thirty pounds a year, when they consider how great a Scandal it is to our Church; and it is to be feared, attended with a Curse: I say, It is

The Lord Chancellor Elsemere *at the Conference at* Hampton Court, *affirmed, He never gave any of the Kings Livings to Pluralists. A worthy President.* Fullers Eccles. Hist. lib. 10. p. 16.

to be hoped, Their Lordships will become so much Self-deniers, as to lay down this Priviledge where they received it, certainly a Blessing and the Prayers of the poor Clergy would attend it; and if Advantage should be reckoned in the case, I know none their Lordships enjoy by it: For I am bound to say that for their Lordships, Honour, That I do not know a Lord within the compass of my Knowledge, that keeps a Beneficed Clerk for his Domestick Chaplain, but have Chaplains of their own, and allow them honourable Stipends and Preferments in due time; but if their Lordships should not be willing to lay aside this Priviledge, the Archbishops that have the power of Dispensation, might remedy it in part, or in all; or his Sacred Majesty, in denying Confirmation. God grant all may be done for the good of the Church.

CHAP.

CHAP. V.

The Fifth Chapter shews what Simony *is, and who shall be said to be guilty of it, and what are the dangers ensuing thereupon.*

HAving shewed my Clerk how to obtain a Benefice, and likewise those which are qualified, how to take a Second Living; It rests, that I should shew them what is to be done after Induction, to confirm them in their Benefices: But because *Simony* is not only scandalous to the Clerk that is guilty of it, but also very dangerous; and I told my Clerk in the Second Chapter, That he must obtain his Presentation without any corrupt or Simoniacal Contract; I thought it fit by the way to let my Clerk know, not only what *Simony* is, but likewise the danger that attends it.

Simony, by the Canonists and Schoolmen, is defined to be, *Studiosa voluntas emendi vel vendendi aliquid spirituale aut spirituali annexum opere subsecuto.* *What* Simony *is.* Panormit. c. *Nemo extra eo, &c.*

And *Thomas Aquinas* says, *Quod Simonia dici videtur à* Simone Mago, *qui donum Spiritus sancti emere voluit, ut ex venditione Signorum quæ per eum fierent multiplicatam pecuniam lucraretur; & sic illi qui spiritualia vendunt, conformantur* Simoni Mago *in intentione,* Tho. Aq. 2a. 2æ. q. 100. Art. 1. Cro. El. 789. Tho. Aq. ibid. Art. 4.

Hoveden *in his History of* H. 2. *mentions a Canon made by* Richard, *Archbishop of* Canterbury, *that the Patron that presents by Simony should lose his Advowson for ever.* Speed 505. a.

In Regiſtr. hab. 1. q. 1. a. Canon, *Quicunque.*

Ibid. Canon Presbyter. *It hath been held, That a Patron that presents by Simony, should lose his Patronage for ever.* Hoveden H. 2. p. 310. Speed 505. a. Act. Apoſt. c. 8. v. 21, &c.

in actu vero illi qui emere volunt: Illi autem qui vendunt in actu imitantur Giezi *diſcipulum* Heliſæi, *de quo legitur* 4 Reg. c. 5. *quod accepit pecuniam à leproſo mundato, unde venditores Spiritualium poſſunt dici, non ſolum Simoniaci, ſed etiam Giezitæ.*

And St. *Gregory* ſays, *Quicunque ſacros ordines vendunt aut emunt, Sacerdotes eſſe non poſſunt, ut ſcriptum eſt. Anathema danti, Anathema accipienti, hæc eſt Simoniaca hæreſis: Quomodo ergo, ſi anathematiſati ſunt, & ſancti non ſunt, ſanctificare alios poſſunt? Et cum in Chriſti corpore non ſunt, quomodo Chriſti corpus tradere vel accipere poſſunt? qui maledictus, benedicere quomodo poteſt?* And the ſame Holy Father further ſays, *Si Presbyter per pecuniam Eccleſiam obtinuerit, non ſolum Eccleſia privetur, ſed etiam Sacerdotii honore ſpolietur.*

And it appears clearly, That the very Intention to buy Spiritual Gifts or Preferments, carries with it the guilt of Simony, as well as the act it ſelf: And therefore the Holy Apoſtle ſaid to *Simon Magus, Cor enim tuum non eſt rectum coram Deo; pœnitentiam itaque age ab hac nequitia tua, & roga Deum ſi forte remittatur tibi hæc cogitatio cordis tui.* But this is in *foro conſcientiæ* only, and not puniſhable by any Human Laws, unleſs it proceed to the Act.

Diviſion. *Canons againſt Simony.*

Simony by the Canoniſt is diſtinguiſhed into *Simoniace & Simoniacus:* The firſt is where the Clerk comes in by Simony, whereunto he is not party or privy: *Simoniacus* is he which obtains a Spiritual Preferment by

a

a Corrupt and Simoniacal Contract, to which he is party or privy, and conſenting.

Againſt this Corruption in the Church many Church Canons have been made, amongſt which I ſhall inſtance only two, and thoſe Provincial ones of our own Nation.

The firſt was made in the time of *Henry* the Second, by *Richard* Archbiſhop of *Canterbury*, and is as follows: Vide Hoveden p. 310.

Nulli liceat Eccleſiam nomine dotalitatis ad aliquem transferre, vel pro præſentatione alicujus perſonæ pecuniam vel aliquid aliud emolumentum pacto interveniente recipere: Quod ſi quis fecerit, & in jure convictus vel confeſſus fuerit, ipſum tam Regia quam noſtra freti authoritate patronatu ejuſdem Eccleſiæ in perpetuum privari ſtatuimus. But it was not ſufficient by a Canon, to deprive a man of his Freehold or Inheritance, be the word *in perpetuum* taken for life, or for ever, as it imports; neither was this Canon ever put in execution, or attempted ſo to be, that I find. Lindw. c. *Nulli Liceat Eccleſiam, &c.* Vide *the Appendix 1. to this Chapter.*

The other Canon I made mention of, I find among the Canons of *Othobonus*, the Pope's Legate here in *England*; which is to this effect: Cap. *Quia plerumque.*

Quia plerumque evenire didicimus, quod, cum ad vacantem Eccleſiam fuit præſentatio facienda, is qui præſentandus eſt prius cum Patrono de certa Summa de bonis Eccleſiæ ſibi annuatim ſolvenda paciſcitur, & ſic pactus ad Eccleſiam præ-

præsentatur. §. *Nos huic actui tam Simoniæ vitium quam Ecclesiæ dispendium ingerenti occurrere intendentes, universas promissiones & pactiones hujusmodi penitus revocamus, & eas imposterum fieri districtius inhibemus: Et si facti fuerint, vires aliquas decernimus non habere.*

But this Canon was of as little effect as the other, as to the making the Contracts void, which were only determinable at the Common Law, where this Canon could not be pleaded in Bar.

Cro. El. 788, 789. Per *Warburton.*

I have mentioned these two Canons, not for the validity or use so much, as to satisfie the Reader what Provincial Canons we have against Simony, and to how little effect they were before the Statute of 31 *Eliz.*

* *Per Bullam* Sixtinam *privatur ipso facto de omnibus dignitatibus, beneficiis, officiis, & efficitur inhabilis ad omnia.* 3 Inst. 154. Tho. Aq. 20.2æ. q. 100. Art. 1. Sect. 2.

But there were some General Canons of the Church of greater force, whereby *Simoniacè* is punished by Deprivation, and *Simoniacus*, by Deprivation and perpetual disability*, not only as to the Church he was presented to upon a Simoniacal Contract, but also to all others: And being *Malum in se*, it is not dispensable either by the King or any other.

St. Aug. de hæresibus in principio. S. Greg. in Reg. hab. 1. q. 1, &c. d. 1.

And it has been held by some of the Fathers to be a Heresie, if not the Sin against the Holy Ghost: But neither the greatness of the Sin, nor the severity of the Canons, were sufficient to restrain this Evil in the Church, till the Parliament of *England* took it into their care, and in the 31*st* of *Eliz.* is was Enacted:

1. *That*

1. *That if any person or persons, for any Sum of Mony, Reward, Gift, profit or benefit, directly or indirectly, or for or by reason of any Promise, Agreement, Grant, Bond, Covenant, or other Assurance for any Sum of Money, Reward, Gift, profit or benefit whatsoever, directly or indirectly, shall * present or † collate any person to any Benefice with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, &c. or ‖ give or bestow the same for or in respect of any such corrupt Cause or Consideration, that then every such Presentation, Collation, gift and bestowing, and every Admission, * Investiture and Inauction thereupon shall be utterly void, &c.*

Stat. 31 El. c. 6. Statute against Simony.

* Relates to Parrons.
† This is to Bishops.
‖ Donatives.
* Bishops.

And that the Queen, her Heirs and Successors, to present, collate, &c. for that one Turn only.

And that every Parson, &c. that shall give or take any such Sum of Money, &c. or that shall take or make any such Promise, &c. shall forfeit and lose the double value of one years profit of every such Benefice. And the person so corruptly taking any such Benefice, shall thereupon and from thenceforth be adjudged a disabled person in Law, to have and enjoy the same Benefice, &c.

Penalty.

2. *And further, That if any person shall for any Sum of Money, Reward, &c.* (ut supra) *directly or indirectly (other than for small and lawful Fees) or for or by reason of any Promise, &c. admit, institute, install, induct, invest, or place any person in or to any Benefice with Cure, &c. That then every person so offending shall forfeit and lose the double value of one years*

Against Preciptate Admission or Institution, &c.

years profit of such Benefice, &c. and that the said Benefice, &c. shall be eftsoon void, &c. And that the Patron, or person to whom the Advowson, &c. shall and may by virtue of this Act, present or collate, &c. as if the person were naturally dead; but no Lapse hereby to incur till six Months after Notice.

Against corrupt Resignations and Exchanges.

3. *And if any Incumbent of any Benefice with Cure of Souls, do or shall corruptly resign or exchange the same, or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any Pension, Sum of Mony, or benefit whatsoever; That then the giver and taker of any such Sum, &c. corruptly, shall lose double the value of the Sum so given, taken or had; the one half to the Queen, &c. and the other moiety to him that will sue for the same, &c. in any of her Majesties Courts of Record, in which no* Essoin, &c.

Ecclesiastical Censures saved.

4. *Provided, that this Act shall not restrain any Censures Ecclesiastical, &c.*

Simony in Ordaining and giving Orders to Preach.

5. *And further it is provided, That if any person shall receive or take any Mony, Fee, Reward, or any other profit directly or indirectly; or shall take any Promise, Agreement, Covenant, Bond, or other Assurance, to receive or have any Mony, Fee, &c. directly or indirectly, to him or themselves, or any of their, &c. Friends (all lawful and ordinary Fees excepted) for or to procure the ordaining or making of any Minister, &c. giving any Order and License to Preach, shall lose Forty pounds; and the Minister so made, Ten pounds.*

And

And that if ſuch Miniſter within ſeven years next after ſuch corrupt entring into the Miniſtry, &c. ſhall accept or take any Benefice, Living, or Promotion Eccleſiaſtical, the ſame Living, after Induction, &c. to be void.

And that the Patron may preſent, &c. as if the party ſo Inducted were naturally dead; the one half of the ſaid Forfeitures to be to the Queen, &c. and the other half to the Informer, to be recovered, (ut ſupra.)

Canons againſt Law.

And I do not obſerve, that the corrupt Patrons were in danger to ſuffer by any Law or Canon before this Law was made: For, as I ſaid before, his Right could not be taken away by a meer Canon not confirmed by Parliament; and before this Law was made, the Incumbent that came in by Simony held the Living which he obtained by Simony, until he was legally and judicially deprived by Sentence Eccleſiaſtical, wherein he often eſcaped for want of ſuch Proof as the Spiritual Law required: But this Statute ſtrikes at the Root, and makes as well the Preſentation, as the Admiſſion, Inſtitution and Induction, void. So that if this Statute had not given the Preſentation to the Queen, the true Patron might have preſented a new Clerk; or in his default the Church would have lapſed. Hob. 167.

But by this Act the corrupt Patron does not only loſe the Preſentation to the King *pro hac vice*, but alſo two years value of the Church; not according to the valuation in the King's Books in the *Firſt-fruit* Office, but according 3 Inſt. 154.

according to the true and utmoſt value of the Church.

3 Inſt. 153. But if one that has no right to preſent ſhall, by means of a corrupt and Simoniacal Agreement preſent a Clerk, who is by his preſentation Admitted, Inſtituted and Inducted into a Church; yet this ſhall not entitle the King to preſent: For though the Act of Parliament makes all void, yet an Uſurper cannot forfeit the right of another in whom there is no fault.

Co. 12. 74. Note, That the Patron ſhall loſe his preſentation within this Law, although the Clerk be not privy to the corrupt Contract.

And it ſhould ſeem by the penning of this Act, that the Forfeiture of the double value of the Church is incurred by the corrupt Contract only; but the Preſentation is not forfeited to the King, unleſs the Clerk be *de facto* preſented or collated upon ſuch corrupt Contract.

Clerk not privy to the Simony. And it matters not whether the Incumbent, that comes in by Simoniacal Contract, were privy thereunto or not, as to making the Church void.

But the greater Queſtion is,

How the Canon Law ſtands in this Caſe, ſee Gratian. Cauſa 1. q. 4. & Gregories Decretals de Simonia, 1619. Whether the Clerk that is preſented upon a Simoniacal Contract, to which he is neither party nor privy, be diſabled for that Turn, to be preſented by the King to that Church?

I have ſeen the Report of a Caſe in the latter end of the Reign of King *James*, where it was Adjudged, That if a Clerk were preſented upon a Simoniacal Contract, to which he was not party or privy, that yet notwithſtanding it was a perpetual Diſability upon that Clerk, as to that Living. Fowler verſus Lapthorn. P. 17 Jac. B.R.

And in the Caſe of *Baker* and *Rogers*, *M.* 42 & 43 *El. B.R.* The Caſe was, *Baker* agreed, the Church being void, to give the Patron 180 *l.* for the Preſentation, who preſented his Brother, who knew nothing of the corrupt Contract till after Induction. And though it was clear, that the Grant of the Preſentation during the Vacancy was meerly void, and that *Baker* preſented as an Uſurper; that yet notwithſtanding the Clerk was in by the corrupt Contract; becauſe it was not to be intended, that the Patron would have ſuffered the Uſurpation, had it not been for the corrupt Contract: And there it ſhould ſeem by Mr. Juſtice *Warburton*, that the Clerk was diſabled *quoad hanc*. Cro. El. 788.

And in a Cauſe between the King and the Biſhop of *Norwich*, *Cole* and *Sair*, Sir *George Crook*, who was a Counſel in the Cauſe, Reports, That Sir *Edward Cook* affirmed it had been adjudged, That if a Church be void, and a Stranger contracts for a Sum of Mony to preſent one who is not privy to the Agreement, that notwithſtanding the Incumbent coming in by the Simoniacal Contract, is a perſon diſabled to enjoy that Benefice, although he obtain a new Cro. Jac. 385. Bulſt. 3. 92.

new Presentation from the King; for the Statute, as to that Living, has disabled him during life.

I must acknowledge, if the Law be so taken, it is very severe.

3 Inst. 154. But let ut hear Sir *Ed. Coke* himself speak, and he in his Coment upon this Statute says, That it was Adjudged in the before-mentioned Case of *Baker* and *Rogers*, That where the Presentee is not privy nor consenting to any such corrupt Contract, as is forbidden by this Statute, (because it is no Simony in him,) there the Presentee shall not be Adjudged a disabled person within this Act: For the words of the Statute are, [*And the person so corruptly giving*;] so as he shall not be disabled, unless he be privy to the Contract: And so (says he there) it was Resolved, *M.* 13 *Jac.*

Co. 12. 101. 3 Inst. 154. And Sir *Edward Coke*, in that Book that goes under the Name of his *Twelth Report*, and without doubt was his own, Reports, That it was so Adjudged in the Case of Dr. *Hutchinson*, Parson of *Kenne* in *Devonshire*, by the whole Court, That if a Clerk be presented upon a corrupt Contract within this Statute, although the Clerk be not privy thereunto, yet the Presentation, Admission and Induction are all void within the Letter of the Statute: For the Law intendeth to inflict punishment upon the Patron, being the Author of this Corruption, by the loss of his Presentation; and upon the Incumbent, who came in by such a corrupt Patron, by the loss of his Living, although

although he never knew of the corrupt Contract; but if the Presentee were not cognizant of the Corruption, then he's not within the Clause of Disability within the same Statute; and so (says he) was the Opinion of all the Judges of *Serjeants-Inn* in *Fleetstreet*, *M.* 8 *Jac.*

And it seems to me upon the penning of the Statute, that this Opinion is more rational than the former; for the words of the Statute are, *That the person so corruptly taking, procuring, seeking or accepting, shall, &c. from thenceforth be adjudged a disabled person in Law, to have or enjoy, &c.* And though the Incumbent in this case take and accept the Benefice upon the corrupt Contract, yet as to him it is not corruptly taking.

It should seem that by the Canon Law one that is Simoniacè *promoted, may upon a voluntary resignation be dispensed with to have the same Living again* Greg Decret. de translatione Episcop tit. 7. & lib. 5. tit. 3. cap. 26.

And that this agrees with the Canon Law, St. *Gregories* Decretals, *Lib.* 1. *Tit.* 7. *cap.* 59. *p.* 210. *si alicujus*; where the Glosspurs the case, *Aliquis est in Prelatum alicujus Ecclesiæ electus per Simoniam eo tamen ignorante nec ratum habente: Talis electio propterea reprobata est, Queritur utrum Episcopus, cum illo poterit dispensare ut iterum ad eandem Prelaturam Elegatur Respondetur, quod Episcopus illa vice cum illo dispensare non potest, sed cum illo qui ignoranter simplex beneficium per Simoniam est adeptus post liberam resignationem potest Episcopus dispensare.* So that it seems the Canon Law makes a difference, where the Incumbent voluntarily resigns, and where he is deprived.

But this being a Point thus controverted, I shall not take upon me to determine, but leave it to the Judgment of the more Learned. *Quære.*

What Contract ſhall be ſaid Simoniacal.

I ſhall in the next place ſhew, What Contracts have been held Simoniacal within the meaning of this Law.

Hill. 16 Jac. rot. 667. C. B.

In a Cauſe between Dr. *Graunt* and one *Bowden*, it was held (upon an Evidence to a Jury,) That where two Parſons agreed to change their Livings, and the one promiſed his Patron, that if he would preſent the other with whom he was to exchange, that he ſhould make the Patron a Leaſe of his Tythes at ſuch a Rent; and this was held Simony, although the other was not privy to the Contract, he making the Leaſe after.

More 916. Cro. El. 685. Smith verſus Shelburne.

The Father in the preſence of his Son, being a Clerk, purchaſed the next Advowſon of a Church, the preſent Incumbent of the Church being ſick, and not likely to live, who ſoon after died, and he preſented his Son; and this was held Simony within this Statute: But if this had been done in the abſence of his Son, it had not been Simony, becauſe the Father is bound to provide for his Son. *Quære* of the difference.

Winch. 63. Sheldon verſus Brett.

And by *Hutton* it was held Simony to purchaſe the next Advowſon, the Incumbent being ſick.

Hob. 165.

In the Caſe of one *Winchcombe* againſt the Biſhop of *Wincheſter* and *Puleſton*, the Caſe was, One *Say* bargained with the Patron (the Incumbent being ſick) for Ninety pounds to preſent him when the Church ſhould be void, and for the better aſſurance took a Grant of the next Avoidance to Friends

Friends in Trust: The Incumbent died, *Say* was presented; and this was held Simony within this Law.

There is of late time a practice introduced by corrupt Patrons, that, if not nipt early in the budding, will make this good Law of no effect; I mean the taking Bonds for Resignation. And this practice took its rise from two Cases in Sir *George Crooke*'s Reports. *Bonds for Resignation.*

The first was between *Jones* and *Laurence*, 8 *Jac.* The Case was thus: *Jones* had a Son which he intended to be a Clergyman, and having obtained a Presentation from Queen *Elizabeth* for the Church of *Streetham*, agreed with the Defendant that he should be presented, so that he would resign when *Jones*'s Son was qualified for the Living; whereupon the Defendant entred into a Bond of a thousand Marks penalty to the Plaintiff upon this condition, (having first recited the Agreement) That if the Defendant within three Months after request should absolutely resign his said Benefice, that then, &c. Cro. Jac 248, 274.

And in an Action of Debt brought upon this Bond, the Defendant pleaded *Non requisivit*, which was found against him; and in Arrest of Judgment it was moved, That this Bond was made for the performance of a Simoniacal Contract, and therefore void; but notwithstanding the Court gave Judgment for the Plaintiff: And two Reasons are given for the Judgment; The first was, because there was no averment of the Cro. ubi supra.

Simony; the ſecond, that it was not material as to the Bond, becauſe that Statute did not make the Bond or Contract void, but only the Preſentation,&c. for this I clearly infer from the concluſion of the caſe.

But I confeſs the ſenſe of the Court was, That in truth, if a man be preparing a Son for the Clergy, and have a Living in his diſpoſal, which falls void before his Son be ready, he may lawfully take a Bond of ſuch perſon as he ſhall preſent, to Reſign, when his Sun is become capable of ſuch Living: And I have nothing to ſay againſt that Opinion, but it is very juſt and reaſonable, Nature obliging that every one ſhould take care for his Poſterity.

But if a Patron take a Bond abſolutely to Reſign upon requeſt, without any ſuch cauſe as the preferment of a Son, or to avoid Pluralities, or Non-reſidence, or ſuch reaſonable cauſe, but only to a corrupt end and purpoſe to exact Mony by this Bond from the Incumbent, or attempt it, though perhaps the Bond may be good againſt the perſon that entred into it: Yet I am clear of Opinion for my own part, that the ſaid Bond makes the Church void, and gives the Preſentation to the King; and it ſhould ſeem in *Jones* and *Laurence*'s Caſe, That if Simony had been averred, it would have been left to a Jury to have adjudged what the intention of the corrupt Patron was.

Cro. Car. 180. Hut. 3. Jones 220.

The other Caſe upon which theſe ſubtil Simoniſts build, was between *Babington* and *Wood*, 5 *Car.* 1. *B.R.* where the Caſe was likewiſe *in* Debt upon an Obligation with a Con-

Condition, That whereas the Plaintiff intended to preſent the Defendant to ſuch a Living, that if the Defendant upon requeſt after his Admiſſion ſhould reſign, that then the Bond to be void,&c.

Upon Oyer of this Bond and Condition, the Defendant demurred, and Judgment was given for the Plaintiff: But all the Court conceived, That if the Defendant had averred, that the Obligation had been made with intent to exact Mony, make a Leaſe, &c. which in it ſelf had been Simony, then upon ſuch a Plea peradventure it might have appeared to have been Simony; and then it might have been a Queſtion, whether the Bond had been good or no? But upon this Demurrer it did not appear there was any Simoniacal Contract; and ſuch a Bond might be made upon a good and lawful deſign, as the preferment of a Son, as in *Jones* and *Laurence*'s caſe before, to avoid Non-reſidence, Pluralities, &c.

So that it appears by both theſe Caſes, That Bonds taken upon prudent and juſt ends to Reſign, are not Simoniacal; but where ſuch Bonds are taken upon corrupt deſigns, and it be made appear by any ſubſequent practice or action, it is clearly Simony, as if the Bond had been expreſly to pay Mony; for what difference is there between a Bond expreſly to pay Mony, and a Bond to Reſign, which is to pay mony, if the Patron ſay, *Either pay me ſo much Mony, or Reſign*; when all the World knows, in ſuch a Caſe the Parſon muſt pay the Mony, or Reſign and be undone?

And the World ſhall never perſwade me, That thoſe Reverend Judges that gave theſe Judgments ever intended further: And I hope that the Reverend Judges, that now ſupply their places, will diſcountenance and diſcourage ſuch practices that tend ſo much to the ruin of the Church and Religion; for I know no Law that tends more to the advancement of Learned and Religious men than this Law doth, and therefore ought to have a benign conſtruction to the end it was deſigned.

Noy 22. T. 15 Jac. rot. 1051. C.B.

I find a Caſe reported, I cannot ſay that it is by an Authentick hand, but ſuch as it is, I will give it the Reader; it was between Sir *John Paſcal* and one *Clerk*, in the *15th* year of King *James*, upon Evidence to a Jury it was held, that ſuch a Bond was Simoniacal; but the Circumſtances not appearing in the Book, the Caſe can be of no great Authority.

But before I ſhake hands with theſe Bonds of Reſignation, it will be convenient I give my young Clergy-man ſome Cautions againſt them: For it is an old Saying, *The Reſetter is worſe than the Thief; for without Reſetters there would be few Thieves.* And,

Advice againſt Bonds for Reſignation.

1. I hold it a great diſ-reputation for any Clergy-man to give any ſuch Bond, which may have the leaſt tincture of Simony; nor do I believe any man of worth will do it, unleſs it be upon ſuch Reaſons as aforeſaid.

2. If

2. If such Bond carry with it a Simoniacal corrupt design, it makes the Clerk no less guilty of Simony than the corrupt Patron; and then the Clerk not only loses his Living by this Statute, but is for ever incapacitated to have it by any future Presentation, and by the Canon-Law is to be degraded and incapacitated to all other, *C. 1. q. 1. Presbyter si, &c.* Concil. Remens. si quis vendiderit. 3 Inst. 153. Margine Noy 72.

Lastly, If he do not Resign upon request, he is subject to the whole penalty of the Bond; for Simoniacal Bonds, Contracts, &c. are not made void by this Act, but only the Presentment, &c. And so you may observe a difference between *malum in se*, and *malum prohibitum*, by the Statute.

These Bonds for Resigation are become so frequent, that hardly a Living passes, unless by Persons of Honour, without them, and very ill use is made of them.

There's a poor Vicar in my Neighbourhood that has a Vicarage but of 40 *l. per annum*, and was forc'd into one of these Bonds to obtain it, and his Patron takes from him Tythes of half the Value of the Church, and he dares not Question him for them; *Opus est medico.* It is time for the Clergy to prefer a Bill in Parliament, not only to make all such Bonds void; but likewise all Bonds, Bills, Covenants, Promises, Judgments, Statutes and Recognizances, made or entred into upon any Simoniacal Contract. Certainly no good man would oppose it; a fit undertaking for my Lords the Bishops.

What Covenants and Agreements are within this Law.

It is now to be considered, What Covenants or Agreements shall be said to be Simoniacal within this Law.

Cro. Car. 425.

If a Father-in-Law, upon the marriage of his Daughter, covenant with his Son-in-Law without any Consideration, but voluntarily, That when such a Church falls void, which is in his gift, that he will present him to it; this is no Simony within this Law: but it should seem, that such Covenant in Consideration of Marriage, or any other Consideration had, made it Simoniacal.

Noy 142. Baker versus Mountford.

So where the Patron took a Bond from the Presentee to pay 10 *l.* yearly towards maintenance of his Predecessor's Son, whilst he remained in the University unpreferred, was held no Simony: And in that case it was said by *Foster* Justice, that it was Adjudged in the Earl of *Sussex*'s Case, where the Patron took a Bond of the Incumbent to pay 5 *l. per annum* to the Widow of his Predecessor, it was no Simony: These were good Charitable Resolutions; *sed quære rationem inde.* And *Foster* said, That notwithstanding great opposition in that case, the Parson enjoyed the Living at that time.

In the next place it will be fit to consider, what Church Preferments are within this Law; the Statute only names Benefices with cure of Souls, Dignities in the Church, Prebends and Livings Ecclesiastical. The word Benefices with Cure of Souls, seems chiefly aimed at Parsons and Vicars in Churches Parochial: Dignities comprehend Archbishops,

2 Inst. 155.

biſhops, Biſhops, Archdeacons, Deans, Chancellors, Treaſurers, Chaunters, Precantors, Officials, &c. For Dignities Eccleſiaſtical are defined by the *Civilians* to be, *Adminiſtratio cum Juriſdictione aliqua conjuncta.*

Lindwood, *cap. ut Clerical. verb. dignit.* Duarynus *de ſacris Eccleſ. Miniſtr. & Beneficiis*, li. 2. c. 6. Lindw. *cap. Eſurientes avaritiæ verb.* Dignitate.

And *Lindwood* tells us, *Dignitas cognoſcitur altero de tribus modis, primo quando beneficium habet adminiſtrationem rerum Eccleſiaſticarum cum Juriſdictione: Secundo ex eo quod habet nomen dignitatis cum prærogativa in choro & capitulo: Tertio quando conſtitutio vel conſuetudo Eccleſiæ habet, quod beneficium habeatur & reputetur pro dignitate.*

Cap. ut. Clericalis verb. *Dignitat.* *But for Authorities at Common Law which ſhall be Dignities, See* 27 H. 6. 5. 25 E. 3. 41. Br. noſme 25. 17 E. 3. 31. 11 H. 4. 40. 14 H. 6. 14. 27 H. 6. 3. 27 H. 8. 10. Fletcher verſus Machaller, T. 7 Car. 1. B R.

And in another place ſpeaking of Dignities, he ſays, *Proprie loquendo de dignitate ordo Epiſcopalis dicitur dignitas; ſic Abbates, Priores conventuales, & officiales Epiſcopi, dicuntur dignitates, & in inferioribus Epiſcopo jus non imponit nomen dignitatis, niſi Archidiaconis & Archipresbyteris, propter Juriſdictionem, & præeminentiam, quas habent ſuper alios: Imo licet* (ſays he) *Archidiaconi nullam haberent Juriſdictionem ex conſuetudine, tamen ratio nominis ſonat in dignitatem, &c.*

Prebends are particularly named, and Livings Eccleſiaſtical are words of a large extent, and draw in Donatives within the penalty of this Law, as hath been adjudged, though they have no cure of Souls.

Having held the Reader ſomething long in my Diſcourſe upon the matters relating to the firſt Paragraph of this Statute, I ſhall, after ſome general Obſervations upon it, draw to a Concluſion.

Who may take advantage of Simony, quod nota.

And firſt it is to be obſerved, That where any Clerk is in by Simony, or any other dignified perſon, every Stranger as well as the King, may take advantage of it: And therefore if the Parſon, Vicar, or other dignified Perſon, ſhall bring any Action for the Tythes, or other things belonging to his Church; the Defendant may avoid the Action, by proving that the Plaintiff obtained his preferment by a Simoniacal Contract.

Sir Jo. Rowſe verſus Wright. P. 17 Jac. Hob. 167, 168, 177.

Contract not executed.

And Note, That a Simoniacal Contract, where the party is not preſented in purſuance of it, is not within the penalty of this Law; but it ſhould ſeem, That if one that has no Right preſent a Clerk upon a Simoniacal Contract, he is within the penalty, though an Uſurper; but not, as hath been ſaid, to give the King the Preſentation.

Hob. 167.

Simoniſt dies poſſeſſed, if the King loſe the Turn. Hob. 166.

It hath been a Queſtion, If the Clerk which comes in by Simony die in poſſeſſion of the Church, Whether the King ſhould loſe his Preſentation? But it hath been Reſolved, that he ſhall not; for the Statute makes the Preſentation, Admiſſion, Inſtitution, and all void; ſo that the Church was never full of an Incumbent, & *nullum tempus occurrit Regi.* But if the King ſuffer an Uſurpation by the Patron, or any other, preſenting another Clerk, who is Inſtituted and Inducted, and after dies Incumbent, in ſuch caſe the King loſes his Preſentment; and ſo it ſhould ſeem, if the Incumbent reſign, or be deprived, the Church having been once full.

And

And note, There may be a Simony, and neither Patron nor Clerk consent or be privy to it; and yet the Church for that Turn is by Statute given to the King: If the Clerk be presented by the means of such corrupt Contract, though neither Patron nor Clerk were privy or consenting to it; so the King, though he himself cannot be guilty of Simony, may present upon a Simoniacal Contract between others, and such Presentation is void by this Act.

Simony, and Patron and Clerk free. Bath versus Potter, P. 17 Jac. B.R.

Suppose a Clerk be presented upon a Simoniacal Contract, and then the King or Parliament, that is, the King in Parliament, with the Assent of his Lords and Commons, pardons all Simony by express or general words, though this may pardon the Penalties, yet the Church remains void.

Pardon of Simony the effect. Lea vers. Smith, M. 40 & 41 El. C.B. contra. Hob. 167.

I shall now conclude this Paragraph with the saying of a Holy Father of the Church, *viz.* St. *Ambrose* upon this Subject; *Cum ordinaretur Episcopus quid dedit? Aurum fuit: quid perdidit? Anima sua fuit: Cum alium ordinaret, quid accepit? Aurum fuit: quid dedit? Lepra fuit.*

De ministeriis & hab. 1. q. 1. Canon cum Ordinor.

I am now come to the second Paragraph of this Statute, which Sir *Edward Cook* (who was a Member of this Parliament) tells us, was added to avoid hasty and precipitate Admissions, Institutions and Inductions, &c. to the prejudice of those that have right to present, and thereby putting them to their Actions to recover their Rights, and there are seldom Bribes (as I may say) in this case given,

4 Inst. 155. *The reason of the Paragraph against precipitate Admissions.*

given, where the Patron has a good and ſure Title.

The taking or giving above the uſual Fees in this Caſe, is as well dangerous to the Clerk as the Officer; for the Church ſhall be void, ſo that the Patron that has right to preſent, may preſent again; and the Uſurper and Officer that takes more than his Fees for ſuch expedition, forfeits double the value of the Benefice for a year, not according to the rate in the *Firſt-fruits* Office, but according to the very true value: But upon this Clauſe no diſability reſts upon the Incumbent, but that he may by the true Patron be preſented again; nor Lapſe, till after ſix months from the time of Notice given by the Biſhop,&c.

When the Church ſhall be void.

And obſerve the Penning of this Clauſe: It is not that the Church ſhall be *ipſo facto* void, or that the Inſtitution, &c. ſhould be void; but that it ſhall be eſtſoons void, and that the Patron ſhall preſent, as if the perſon were naturally dead: So that it ſhould ſeem the Church is once full by this Inſtitution and Induction; and hence there may ſome doubts ariſe, Whether the Church ſhall be void *ipſo facto*, or whether it muſt be avoided by Eccleſiaſtical Sentence of Deprivation. But it ſeems to me, That the Patron may preſent immediately, without any Sentence Eccleſiaſtical.

Reſignation and Exchanges Simoniacal.

3. The third Paragraph of this Statute is made againſt ſuch as ſhall corruptly for Mony, Penſion, or other benefit, reſign or exchange their Livings with any other:

In

In that Case, as well the Giver as the Taker forfeits double the Sum of Mony, &c. given and received; but this Clause works no Avoidance or Disability in the person that is guilty.

The Ecclesiastical Jurisdiction saved.

The fourth Paragraph preserves the Ecclesiastical Jurisdiction, that they may proceed Judicially to censure the Parties for their Corruption in buying and selling Church Preferments: Wherein, as should seem, the Ecclesiastical Laws in some Circumstances are more severe than this Statute; for by that Law, as I take it, he that is convicted of Simony, is after incapacitated not only to that Living, but to all other Church Preferments: But of this be informed by the Canonist.

Cro. El. 788, 789.

But I know no Reason, why those corrupt Patrons that take Bonds for Resignation without any reasonable cause apparent, may not be called to an account before the Ordinary, and punished by Ecclesiastical Censures, if it appear they were taken to any corrupt end, or if afterwards he shall endeavour to exact Mony by colour of any such Bonds.

Corrupt giving Orders and Licenses to preach.

I am now come to the last Paragraph of this Statute, which is also a two-edged Law, that punishes as well the Giver as Taker of greater Fee or Reward, than the ordinary and just Fees for, or for procuring any person to be Ordained or made a Minister, or giving any Order or Licence to Preach, &c. but this is more severe upon the Clergyman, than the Officer: For the Officer only forfeits

forfeits forty ſhillings, but the Clergy-man forfeits ten pounds, and all the Livings he ſhall take within ſeven years are made void by this Law after Induction; ſo that for ſeven years an Incapacity lies upon the Clerk: How careful ought Clergy-men to be, what Fees they give for their Orders? And note the manner of the penning of this Paragraph, That the Church ſhall not be void till after Induction.

The firſt Paragraph makes the Preſentation, Inſtitution and Induction, and all void: So that the Church in that caſe is never full.

The ſecond Paragraph makes it void, not till after the corrupt Admiſſion, Inſtitution, Inſtallation, Induction, Inveſtiture or placing; and this not till after Induction; by which means the Grantee of the next Avoidance that preſents ſuch Clerks, cannot preſent again: And ſo it is where the Patrons preſent by Turn, the preſenting ſuch a Clerk will ſatisfie a Turn, if Inducted.

Co. 5. 102. a.

How the Forfeitures are to be recovered.

Laſtly, Obſerve all pecuniary Forfeitures and Penalties within this Statute are given the King and Informer, and are to be recovered by Bill, Plaint, Action of Debt or Information in any of his Majeſties Courts of Record; that is, the *Chancery*, *Kings-Bench*, *Common-Pleas*, and *Exchequer* at *Weſtminſter*; but not in any Inferiour Court of Record, and no Eſſoign, Priviledge, Protection or Wager of Law is to be allowed: But I conceive the Priviledge or Protection of Parliament are not intended in theſe general Words,

Gregory's caſe, Co. 6. 20. Dyer. 236. Cro. Eliz. 737. Cro. Car. 112, 146. Mo. 421. contr. Co. 12. 99. 4 Inſt. 164. Hales Pl. of the Crown 161.

Words, but the common Protections and Priviledges of Officers and Courts. *Ideo quære inde.* *Quære.*

It is not proper for this Discourse to examine by what Authority any thing at all is taken for giving Orders, Admissions, Institutions, &c. since our Saviour says, *Gratis accepistis, gratis date:* However, since it is a thing (I doubt) too much practised, use has made it seem lawful, by which means it is swallowed as a due Fee without examination of the matter; I shall therefore put them that are concerned in mind of two other Canons, and then leave the matter to further consideration, and amongst those Canons that are called the Canons of the Apostles, I find one to this effect: *See a Canon against it, and what Fees shall be taken by the Clerks.* Lindw. c. *sæva & miserabilis.* Mat. 10. v. 8.

Si quis Episcopus, aut Presbyter, aut Diaconus, per pecuniam hanc obtinuerit dignitatem, dejiceatur, & ipse ordinator ejus à communione omnibus modis abscindatur. Can. 30.

And in the Council of *Chalcedon* to the same effect, which follows:

Si quis Episcopus per pecuniam Ordinationem fecerit, & pretium redegerit Spiritus Sancti gratiam quæ vendi non potest, Ordinaveritque per pecuniam, Presbyterum, aut Diaconum, vel quemlibet de his, qui cognominantur in clero, promoverit, & dispensatorem aut defensorem, vel quemlibet qui subjectus est regulæ, pro sui turpissimi lucri commodo, is qui hoc attentare probatus fuerit, proprii gradus periculo subjacebit, & qui ordinatus est, nihil ex hac Ordinatione, vel promotione quæ est pro negatione facta proficiat, sed sit alienus. à dignitate, vel solicitudine,

dine, quam pecuniis acquisivit, &c. Concil. Cabilonense, *ca.*16. *ad eandem sententiam.*

But it may be it will be said, That these Canons are against selling of Orders, but not against ancient and just Fees; to which hear what the Council of *Orleans* says:

Can.3. *Ne quis Episcopus quibuslibet causis vel Episcoporum Ordinationibus cæterorumque Clericorum aliquid accipere præsumat, quia Sacerdotem nefas est cupiditatis venalitate corrumpi.*

Can.63. And the Council of *Lateran* under Pope *Innocent* the Third, decreed, *Ne pro consecrationibus Episcoporum, aut benedictionibus, aut ordinibus, aliquod accipiatur.*

And to the like effect is the Council of *Braga*, cap.4.

Cap.*Sæva & Miserabilis.* And our own Canons are to the same effect, and limit the Clerks Fees to twelve pence for Letters of Institution and Collation, and six pence for Letters of Orders: But he that has a mind to satisfie himself herein further, let him read that most excellent History of the Council of *Trent*, which is faithfully translated by Sir *Nathaniel Brent*, where this Point is excellently discussed *Pro* and *Con*, where I will leave my Reader, and conclude this Chapter, and in the next place shew my Parson, Vicar, &c. what he is to do before, at, and after his Admission, Institution and Induction.

In the former Impressions of this Book, *Chap.*5. *pag.*35. I mention a Canon to be made *Anno* 1229. in the time of *Richard Wethershead* Archbishop of *Canterbury*, therein following the Error of the Learned *Lindwood*;

wood; which in truth was made in the time of another *Richard* Archbishop of *Canterbury*, who lived in the time of *Henry* the Second, at a Synod held at *London* 1175. in the presence of two Kings, *viz. H.* 2. and his Son that was Crowned in his Fathers life time, and confirmed the same, which made that no more than a Canon, which I do affirm could not deprive any body of his Freehold or Inheritance. And my Lord *Hobart*, in his Argument of *Winchcombe's* Case against the Bishop of *Winchester* and *Puleson*, affirms as much, That if the Statute had not given the Presentation to the King, where the Church was void by Simony, the Patron ought to have presented; which proves he had not lost his Patronage.

Hoveden 310.b

Hobart 167. 31 El. cap. 6.

And as to the Canon of *Othobon*, which I vouch in the next Page, which makes all Simoniacal Contracts void, I affirm it to be of as little force as the former, as to making a Simoniacal Contract void: And of the same Opinion was my Lord *Hobart*, who says, That a Simoniacal Contract is, *Contractus ex turpi causa & contra bonos mores*, and so is against the Law, and void by the Statute, not by the Canon.

Hobart 167.

Since this Book was last Printed, in the 1st of *W.* and *M.* there was an Act made, That after the death of a person Simoniacally presented, the Offence or Contract of Simony should neither by way of Title in Pleading, or in Evidence to a Jury, or otherwise hereafter be alledged or pleaded to the prejudice of any other Patron innocent

That 1 W. & M. *relief for Leases made by Simoniacks.*

of Simony, or of his Clerk, by him presented or promoted upon pretence of Lapse to the Crown, Metropolitan or otherwise, unless the person Simoniack or Simoniacally presented, or his Patron was convicted of such Offence at the Common Law, or some Ecclesiastical Court, in the life time of the person Simoniack or Simoniacally promoted or presented, any Law, Statute, &c.

And by the same Act it is further provided, That no Lease or Leases really and *bona fide* made, or then after to be made by any person as aforesaid, Simoniack or Simoniacally promoted to any Deanary, Prebend or Parsonage, or other Ecclesiastical Benefice or Dignity, for good and valuable Consideration to any Tenant or person, not being privy unto, or having notice of such Simony; but shall be good and effectual in the Law, the said Simony notwithstanding.

See the Statute at large, *For confirming Leases made by Simoniacks.*

CAP.

CHAP. VI.

The ſixth Chapter ſhews, What a Clerk is to do before, at, and after his Admiſſion, Inſtitution and Induction, to make him a compleat Parſon.

NO man at this day is capable to be Parſon, Vicar, &c. before he is a Prieſt in Orders, which he cannot be before he is Four and twenty years of Age, as has been ſaid; and if any perſon ſhall be admitted, inſtituted and inducted into any Living before he is in Holy Orders, his admiſſion, inſtitution and induction are void by the late Act of Uniformity. *Every Parſon and Vicar muſt be a Prieſt.* Stat. 14 Car. 2. cap. 4.

Secondly, He muſt make his Subſcription according to the ſaid Act, and have a Certificate from the Biſhop, or, &c. under his Hand and Seal, that he hath ſo done; and then within two Months after he is inducted, he muſt, during Divine Service (that is, after ſome part of the Divine Service of the Church for that day appointed is read, and before the whole is finiſhed) read the Nine and thirty Articles of Religion in the Pariſh Church, &c. into which he ſhall be inducted, and declare his unfeigned aſſent and conſent to all that is therein contained; and in default herein, the Church is *ipſo facto* void without any Sentence declaratory; and it is not enough for him to declare *Subſcription and Certificate.* 13 El. ca. 12. *Read Prayers.* *Read the Articles.* Stat. ſupra. Co. 6. 29. b.

clare his assent to them so far as they are
4 Inst. 324. agreeable to the Word of God, or with any qualification, but positively.

And he must likewise upon some Sunday or Lords-day, within two Monts after actual possession of such Benefice, &c. (which is intended within two Months after Induction or Installation, &c.) read the Book of
Stat. supra. *Common Prayer, (i. e.* the whole Service of the Church appointed for that day, as it is there appointed) and likewise declare his assent and consent to all the matters and things therein contained, in these words;
Declaration. *I* A. B. *do declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the Book, intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of* England, *together with the* Psalter *or* Psalms *of* David, *pointed as they are to be sung or said in Churches, and the form or manner of making, ordaining and consecrating of Bishops, Priests and Deacons.*

Stat. 14 Car. 2. cap. 4. And such Parson, Vicar, &c. must within three Months after his Institution, upon some Lords-day, during Divine Service, (that is, as hath been said, after some part of it be read, and before all be read) publickly and openly read his Certificate from the Bishop, &c. of his Subscription to the Declaration following; and he must at the same time read the Declaration or Acknowledgment it self in the Church where he is to officiate, before the Congregation there assembled. The Declaration follows:

I

I *A. B.* declare, [*That it is not lawful upon any pretence whatſoever, to take Arms againſt the King: And that I do abhor that treaſonable Poſition of taking Arms by his Authority againſt his Perſon, or againſt thoſe that are Commiſſionated by him*:] And that I will conform to the Liturgy of the Church of *England*, as it is now by Law eſtabliſhed. [*And I do declare, That I do hold, there lies no obligation upon me, or on any other perſon, from the Oath commonly called*, The Solemn League and Covenant, *to endeavour any change or alteration of Government, either in Church or State; And that the ſame was in it ſelf an unlawful Oath, and impoſed on the Subjects of this Realm againſt the known Laws and Liberties of this Kingdom.*]

This part is repealed by a Statute made by King William and Queen Mary, 24th day of April, 1689.

This part is expired.

If any Parſon, Vicar, &c. fail in the doing of any of theſe things before-mentioned, or any of theſe things be neglected, the Church becomes void; and the Clerk that makes ſuch failure, in caſe he ſhall ſue for his Tythes, or any other Church-duty, or other thing belonging to his Church, if the Defendant inſiſt upon it, muſt prove the doing of all theſe things. But uſually the Judges in favour of the Clergy, after they have been in poſſeſſion of their Livings ten or twenty years, or any conſiderable time, will preſume all theſe things regularly done, and will not put the Parſons, &c. to the preciſe proof of them.

Dyer 346. p. 7. Co. 6. 29. b.

And it is obſerved, That the Parſons, Vicars, &c. muſt upon the acceptance of every new Living or Eccleſiaſtical Preferment

Advice to the Clergy.

within this Law, repeat all these things; for the performance of all these things upon the taking of one Living, will not satisfie for any other.

I shall give my Reverend Clergy-men therefore this Caution, That if any of them have accepted any Ecclesiastical Preferments, and have negligently omitted any of these things, and that thereby they may be lapsed to the King, that they obtain Presentations from the King *ad Corroborandum*; and that thereupon they perfect all their former neglects; or they may obtain Letters Patents of Confirmation, which may be pleaded in bar of any *Quare Impedit* after brought by the King.

Raftals Entries. Quare Imped. Roy 22. Plo. 528. b. 11 H. 4. 9. a. Hob. 302. Dyer 392. p. 70. 14 H. 4. 36. b. 25 E. 3. 47. a. Plo. 528. b. Rast. Entries. Quare Imped. in Roy 22.

And for the future I advise them, That they first have some credible Witnesses present, when they make their Subscriptions before the Bishop; and that they attest the Bishops Certificate; and that they get two Books of Articles; and that when they read the 39 Articles, they give one of those Books of Articles to some credible Parishioners to read with them, and then attest the Book, that they were present, and heard the Clerk read the said Thirty nine Articles during the time of Common-Prayer, and declare his unfeigned assent and consent to all the matters and things therein contained, by subscribing their Names thereunto; and that the Clergy-man keep safely the said Book of Articles with this attestation.

And I advise, That when he reads the Book of Common-Prayer, which must (as above is said) be read Morning and Evening,

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in all things which is preſcribed therein, within two Months after Induction; that he likewiſe make ſome intelligent Pariſhioners to read with him, and give them a Copy of the Declaration aforeſaid, and at the foot of it make an atteſtation under their hands, of his reading the ſaid Book of Common-Prayer and Declaration, which may be done in this Form:

Firſt in a fair legible Hand write the Declaration aforeſaid; then write under to this effect; *Memorand. That upon Sunday the day of in the year of our Lord* A. B. *Parſon of* D. *in the County of* D. *read Common Prayers in the Pariſh Church of* D. *aforeſaid, both in the Forenoon and Afternoon of the ſame day, according to the Form and Order preſcribed and directed by the Book, intituled, The Book of Common-Prayer and Adminiſtration of the Sacraments, and other Rites and Ceremonies of the Church, according to the uſe of the Church of* England, *together with the* Pſalter *or* Pſalms *of* David, *pointed as they are to be ſung or ſaid in Churches, the form or manner of making, ordaining and conſecrating of Biſhops, Prieſts and Deacons:* And immediately after reading the ſame, make a Declaration of his unfeigned aſſent and conſent, to all the matters and things therein contained in the form and words above-written. And then let the Witneſſes hereunto ſubſcribe the ſame Certificate; which the Clerk is to keep carefully with his Inſtitution, Induction and Certificate, with the Book of Articles atteſted, as is before directed. And

in these things I advise all the Clergy-men, to be very tender and careful.

13 El cap. 12. *What age a Parson ought to be of.*

There was an Act made in the thirteenth year of Queen *Elizabeth*, *That none should be admitted to any Benefice, unless he were three and twenty years of age, and a Deacon at least, and should subscribe the Thirty nine Articles before he should be admitted; and that none should be admitted to preach or administer the Sacraments, unless such persons were 24 years of age at least.* But this Law is in part altered by the before-mentioned new Statute of *Uniformity*; for now none can be admitted to any Living till he is a Priest in Holy Orders, which he cannot be by this Statute, till he is 24 years of age.

Who may be admitted to a Benefice of 30 l. per annum in the Kings Books.

And by the same Statute it is enacted, *That none shall be admitted to any Benefice with cure of Souls, of the value of 30 l. or upwards in the Kings Books, unless he be a Bachelor of Divinity at least, or a Preacher licensed by some Bishop, or one of the Universities of this Kingdom; and if not so qualified, his Institution to be void.*

Otely versus Shepherd, circa 13 Car. 1. C.B. in Qu. Imp.

If one be instituted into a Benefice under the age of 23 years, whereby it is made void within the Statute of 13 Eliz. yet no Lapse shall incur, because the Presentment is not made void.

It may be a Question, Whether Parsons, Vicars, &c. are within the late Act for preventing Dangers which may happen from Popish Recusants; therefore it is a safe way to receive the Sacrament, take the Oaths, and make the Subscriptions prescribed by that Act; *Cautela abundans non nocet.*

CHAP.

CHAP. VII.

The seventh Chapter shews the Duty of the Parson, Vicar, &c. after Induction, and the former Ceremonies performed; and treats of Non-residence, and the Penalties thereof, and for what Reasons the same may be excused.

HE *that has orderly*, as aforesaid, *obtained an Ecclesiastical preferment in the Church of* England, *must be conformable to the Government and Orders thereof, and must not use any other publick Form of Prayer than what is prescribed by the Book of* Common-Prayer *beforementioned, neither must he administer the Sacraments of* Baptism *and the* Lords Supper *in any other manner or form, than what is therein and thereby directed and prescribed.* *Parsons, &c. must be conformable.* Stat. 1 Eliz. c. 2.

And if any Incumbent be resident upon his Living, (as he ought to be) and keep a Curate, he is bound by the Act of Uniformity *once every month at least, to read the Common Prayers of the Church, according as they are directed by the Book of Common Prayer, in his Parish Church in his own person, or he forfeits* 5 l. *for every time he fails therein.* See the Statute how he is to be convicted, and the penalty to be levied. St. 14 Car. 2. c. 4. *When, and how oft he must read the Common Prayers.*

And the Common Prayer by that Statute is to be read before every Lecture; and it is not sufficient to read a piece here, and a piece there, *Before every Lecture.*

where

where the party pleases; but they must read the whole appointed for the day orderly, as it is appointed with all the Circumstances and Ceremonies of kneeling and standing, as is prescribed, otherwise it is no reading of Common Prayers within this Law; quod nota.

St. 14 Car. 2. c. 4. And note, That by the late Statute of *Uniformity*, the former Statutes of *Uniformity* and Penalties therein, are extended to this Book of *Common Prayer* now lately established.

St. 1 Eliz. c. 2. And by the Statute of 1 *Eliz.* it is enacted, *That, if any Minister, that ought or should sing or say* Common Prayer, &c. *refuse to use the same Common Prayers, or to administer the Sacraments, &c. in such order and form as they are mentioned and set forth in the Common Prayer Book, or shall wilfully or obstinately standing in the same, use any other Rite, Ceremony, Order, Form or Manner of celebrating the Lords Supper, or other open Prayers, or shall preach, declare, or speak any thing in derogation or depraving of the same Book, or any thing therein contained, &c. upon Conviction, the party guilty of any of these offences, forfeits the profits of all his Living and Spiritual Promotions for a year, and is to suffer Imprisonment for six months without Bail or Mainprise; and upon a second Conviction for the like offence, he is to suffer Imprisonment for a whole year, and be deprived* iplo facto *of all his Spiritual Promotions; and upon a third Conviction for the like offence shall be imprisoned during his life, and lose all his Spiritual Promotions, if he have any: And if such person have no Spiritual Promotions, then for the first offence he is to be imprisoned for a year, for the second during life without Bail or Mainprise.*

The Penalty for using other Forms of Prayer, &c.

I have been the briefer in theſe matters upon the Statutes of *Uniformity*, becauſe they are printed at large before the Book of Common Prayer, to which I refer the Reader for his fuller ſatisfaction; and they are ſo plain and full, that they need no Comment, but to adviſe all Clergy-men to read and obſerve them cautiouſly.

I ſhall only give the Reader this further Caution, That if any Parſon, Vicar, &c. ſhall maintain any Doctrine, contrary to the Thirty nine Articles of Religion, it is cauſe of Deprivation; or if he adminiſters the Sacraments in any other Form than is preſcribed by the Book of Common Prayer, he forfeits 100 *l.* by a Statute made in the 13*th* year of Queen *Eliz.* And by the new Statute of *Uniformity* this Penalty is extended to ſuch as do it contrary to the preſent Book of Common Prayer now uſed. 13 Eliz. c. 12.

The next Duty incumbent upon the Parſons, Vicars, &c. is, that they be reſident upon their Cures, a Duty incumbent upon every one that hath the cure of Souls in the Church of Chriſt: For, as *Padre Paulo* in his moſt excellent Hiſtory of the Council of *Trent* obſerves, That in the firſt 700 years after Chriſt there was not any ſuch thing known in the Weſtern Church, that any man ſhould have an Office or Title in the Church, and not do the duty; and many Canons and Decrees have been made againſt Non-reſidence: And in the Council of *Trent* it was held by much the greater and better number of the Prelates and Fathers *Page 217. in the Engliſh Tranſlation.*

Non-reſidence, when it came into the Church.

The ſame Hiſt. p. 217, &c. 486, &c. 509, &c. 496.

thers in that Council, that Residence was *Jure Divino*, and undoubtedly had been so decreed, if the Pope had not used all his old Stragems against it; but whilst the Pope had power to dispense with Residence, all the Canons and Decrees of that Church were of little greater effect, than to fill his Coffers with Mony; for in this Kingdom, how many Bishopricks, Abbies, Priories, &c. were enjoyed (I mean the Profits of them) by Foreigners, that never saw them, or took any care of their Duties? I should be glad if it were much better now.

Residence Jure Divino.

The exact Abridgment of Records, nu. 50.

The Commons of *England* often complained against Pluralities and Non-residence, and in the Parliament held 2 *H.* 4. the Commons prayed, That all such as procured from *Rome* (for in those days they came from *Rome*) any Bulls for Pluralities or Non-residence, should incur the pain of *Provisoes*; except the Chaplains of Archbishops and Bishops, and Scholars; and those that had any Bulls should cancel them.

Ibid. 8 H. 4. num. 113.

And in the Parliament held 8 *H.* 4. the Commons petitioned, That the King might have a moiety of the Profits of all Benefices where the Incumbent was Non-resident.

Ibid. 9 H. 4. num. 70.

The like was prayed in the Parliament, in 9 *H.* 4.

Ibid. 4 H. 6. num. 38.

In the Parliament 4 *H.* 6. it was prayed by the Commons, That all Parsons and Vicars, and others having Cures, and not being resident thereupon, should forfeit their Benefices, the one half to the King, and the other half to the Patron.

In

In the Parliament held the same year, the Commons prayed, That for the Non-residence of the Incumbent, the Patron might present a new Clerk; and great reason in my Judgment, and very agreeable to the Rules of the Common Law, where a Temporal Officer loses his Office for Non-user: And I know no reason why it should not be so in Spiritual Offices, where the Souls of a many poor People are neglected. But these had none of them the good fortune to be reduced into Laws; but I presume these Complaints in Parliament so awakened the Pope and Clergy, that there was some Reformation: For I find no more Complaints in Parliament concerning this matter, till the 21 *H.* 8. In which Parliament it was enacted; Ibid. 4 H. 6. num. 31.

That as well every Spiritual Person then being promoted to any Archdeaconry, Deanry or Dignity in any Monastery or Cathedral, or other Church Conventual, or Collegiate, or being beneficed with any Parsonage or Vicarage; as all and every Spiritual person, which then after should be promoted to any of the said Dignities or Benefices with any Parsonage or Vicarage from the Feast of St. Michael *then next following, should be personally resident and abiding, in, at, or upon his said Dignity, Prebend or Benefice, or one of them at the least; and that if any such person wilfully absented himself from his said Benefice, &c. by the space of a Month at one time, or two Months at several times in any one year to be accounted at several times, that such person so absenting himself should forfeit* 10 *l. for every such default, the one half to the King,* 21 H. 8. cap. 13. *Act against Non-residence.*

the

the other half to the Informer, to be recovered, as is expreſſed in the Act.

And by the ſame Act, there is a *Proviſo* worth mentioning, though now out of date, to this effect:

That if any perſon ſhould procure any Diſpenſation from Rome, *or elſewhere, to be Non-reſident, the party guilty ſhould forfeit twenty pounds.*

By this and other Statutes mentioned in this Book it is evident, That the Parliaments of *England*, even when the Pope was in full power, often made bold with his Holineſs, to correct his and his Courts corruption.

Certainly this was an excellent Law, if there had been no more in it but the diſpenſing with ſuch perſons as by the ſame Law are qualified to have two Livings; and the perſons capable to qualifie Chaplains to have Pluralities had not been grown ſo numerous, that there are but few of the beſt Livings but they are held by Pluraliſts, and they either by colour of attending their Lords, their Deanries or Prebends, find an excuſe to be Non-reſident, which has made this Law of little effect; nay, I doubt I may ſay, That we are now in a far worſe condition than before the making of this Act: For Diſpenſations from *Rome* (as all other things there) were coſtly, came ſlowly, being far to fetch; that I preſume there's ten Diſpenſations for Pluralities now, for one then; and few of thoſe diſpenſed with were Non-reſidents upon both Livings, as now they be: Two great Pariſhes in many

many places being left to the care of two Boys that came but the other day from School, and perhaps fitter to be there ſtill, whilſt the Shepherd that takes the Fleece, either Feaſts it out in his Lords Family, or takes his eaſe upon a Prebend or Deanry.

The end of this Law.

This good Law principally aimed at three ends or effects:

To do their Duties.

1. That every Clergy-man might attend his duty in reading the publick Prayers of the Church, adminiſtring the Sacraments, Preaching, inſpecting the behaviour of his his Flock, and performing all ſacred and divine Offices, like a good and faithful Shepherd: And I do wonder, with what Conſcience any Clergy-man can expect his dues from his Pariſhioners, that does not perform his Duty in the firſt place.

To avoid Dilapidations.

2. The ſecond end of this good Law, is to avoid Dilapidations in the Buildings belonging to their Livings: For you ſhall ſeldom ſee a Non-reſident, but he is alſo a Dilapidator; and 'tis no wonder that he that neglects the Flock, lets the Sheepfold go to ruin.

To maintain Hoſpitality. St. 15 R. 2. c. 6. & 4 H. 4. c. 12.

3. The third end of this good Law, was to maintain Hoſpitality: And I would wiſh every Clergy-man to remember, that the Poor have a ſhare in the Tythes with him.

Pope *Sylveſter*, in the beginning of the fourth Century, decreed, That the Revenues of the Church ſhould be divided into four parts: *Quarum una cedat Pontifici ad ſui ſuſtentationem; Altera Presbyteris & Diaconis, & omni Clero: Tertia Templorum & Eccleſiarum*

Can. 4. Vide *Appendix at the end of this Chapter.*

rum reparationi; Quarta pauperibus & infirmis, & peregrinis.

Can. 24. Lamb. 132. And by a Canon of our own made in the time of King *Alfred*, it is decreed, That the Tythes should be delivered to the Priest, who should divide them into three parts: *Unam partem ad Ecclesiæ reparationem; alteram pauperibus erogandam; tertiam vero ministris Dei qui Ecclesiam ibi curant.*

Cap. in decimis. And by a Provincial Canon of our own, it is ordered, *Quod religiosi beneficia Ecclesiastica obtinentes, secundum hujusmodi beneficiorum facultates annis singulis pauperibus parochianis beneficiorum eorundem certam Eleemosynæ quantitatem, Ordinariorum ipsorum locorum moderandam arbitrio, per ipsos Episcopos distribuere compellantur, &c.* By all which it appears, that originally the Poor had a share in the Tythes.

And to this end the Statute enjoyns the Clergy-man to be resident in and upon his Living, that is, his Parsonage or Vicarage-House, if he have any, and not at any other House in the Parish; but Imprisonment without fraud, or removing for Health without fraud, or not having a House upon his Glebe, excuses his Residence for the time; for the words of the Statute are, [*That he that wilfully absents himself.*]

Co. 6. 21. b. More 540. dubitatur.

So if any Parson, Vicar, &c. shall be in the Kings Service beyond Sea, or in any Pilgrimage, or shall without * fraud abide in any University within this Realm to study, or is a Chaplain qualified within this Statute, to have Plurality of Benefices, or the *Chaplains of any of the Judges of the* Kings Bench *or* Common-Pleas, *Chancellor or*

* *But by the Stat. of* 28 H. 8. c. 13. *this Law is restrained to such as are under* 40 *years of age, and do the Exercises of the University.*

or Chief Baron of the Exchequer, *of the King's Attorney and Solicitor, and the Chaplains of the Chancellor of the Dutchy of* Lancaster, *of the Augmentations, First-fruits, and Tenths; of the Master of the Wards, the Surveyor General; of the Treasurer of the Chamber and Augmentations, and Groom of the Stool, whilst such Chaplains abide and are attendant in the Households of their Masters; and the Master of the* Rolls, *the Dean of the Arches, and the Chancellors and Commissaries of Archbishops and Bishops, and the Twelve Masters of the* Chancery, *so long as they shall continue in their places, may be Non-resident: But the Chaplains of the Chancellor of the Dutchy, Augmentations, First-fruits, Master of the Wards, Surveyor General, Treasurer of the Chamber and Augmentations, and Groom of the Stool, are to be Resident twice in a year at least, Eight days at each time: And the King may give license to any of his own Chaplains to be Non-resident: And any Ecclesiastical Person, to attend any Suit in the* Chancery *or* Star-Chamber *without fraud, may be Non-resident for so long time, &c.*

Who may be Non residents.
25 H.8.c.16.
33 H.8.c.28.
21 H.8.c.13.
33 H.8.c.28.
9 E.2.c.8.
21 H.8.c.13.

There is another *Proviso* in this Statute that enables the King *to give his Chaplains as many Livings as he pleases, and to dispense with their own Residence.*

Master dies, &c. Co. 4. 119. 2. Co. 6. 21.

But if a Chaplain be qualified in respect of his Service to have a Plurality, and his Lord or Master dye, be attaint of Treason, Felony, or removed from his place, it will not serve the Chaplains turn to be resident upon one of his Livings without the Kings special License, with a *Non obstante.*

Regiſt.Orig. 58.b. F.N.B.44.g.

And here I muſt not omit an ancient Prerogative of the Kings of *England*, practiſed in the height of Popery, That where any Clergy-men were employed in the Kings Service, he might diſpenſe with their Non-reſidence; and if the Spiritual Judges went about to cenſure or puniſh them by Eccleſiaſtical Cenſures for ſuch Non-reſidence, the Kings of *England* have ſent their Writs Mandatory, commanding them to ſurceaſe.

Concil.gener. Conſt.Can.80. Concil.Sardi. Can.15.Conſt. Othon. *Quid ad venerabiles Patres.* *Biſhops reſidence requirable.* 2 Inſt.625.

But Biſhops and Archbiſhops are not within this Law, but not exempt from this Duty; there being ſeveral Canons that require it: And Biſhops may be compelled hereunto by Eccleſiaſtical Cenſures by their Superiours; and the King may compel them by ſeizing their Temporalties.

A notable Preſident whereof we have in the time of *H.* 3. when Popery was at higheſt, and the King not look'd upon as Head of the Church; yet that King ſent his Writ Mandatory to the Biſhop of *Hereford*, to be attendant upon his Biſhoprick, otherwiſe he would ſeize of all his Temporalties. Which Writ, as well for the rarity, as alſo for the Religious grounds upon which it was granted, will not be ungrateful to the Reader to ſee, and for whoſe ſatisfaction I ſhall give it him as I find it recorded by Sir *Edward Coke*, and wiſh there were no cauſe to make uſe of it in theſe days:

Rex Epiſcopo H. *ſalutem. Paſtores gregibus præponuntur, ut diei, noctiſque vigilias exercendo, oves famelicas in fertilitatis paſcua introducant:*

troducant: Errantes vero per verbum salutis, & virgam correctionis in unius ovilis conservare studeant indissolubilem unitatem: Sed sunt nonnulli qui hanc doctrinam dampnabiliter contemnentes, & sua ab aliis pecora distinguere nescientes, lac & lanam tollunt, qualiter dominicus grex alatur non curantes, temporalia rapiunt: Et quis in parochia fame pereat, aut periclitetur in moribus, non attendunt; qui non Pastores, sed Mercenarij potius dici promerentur: Hoc siquidem dum hiis diebus ad disponendum de regni nostri præsidiis in partes Marchiæ nos transferemus in Ecclesia vestra, (dolenter referimus) nos inveniisse, quam adeo invenimus pastoris solatio destitutam ut nedum Episcopum, sed nec officialem haberet, Vicarium aut Diaconum qui quicquam spiritualitatis exercere possit in eadem. Sed Ecclesia ipsa quæ olim deliciis affluere consuevit, & Canonicis qui ibidem nocturnis & diurnis officiis vacare, & opera charitatis exercere deberent, eam deserentibus & longe degentibus in remotis, stola Jucunditatis exuta cecidit in terram, viduitatis suæ detrimenta deplorans, nec est qui consoletur eam ex omnibus curis ejus: Sane dum hæc vidimus, & consideramus diligenter, pietatis, aculeus, viscera nostra commovit, & compassionis gladius intima cordis nostri acrius vulneravit, ut tantam Ecclesiæ matris nostræ injuriam ulterius dissimulare non possimus, nec pertransire incorrectam. Quapropter vobis mandamus firmiter injungentes, quatenus ad Ecclesiam vestram prædictam, occasionibus quibuscunque postpositis, cum ea qua poteritis celeritate vos transferri curetis, commissum vobis in eadem cura pastorali officium personaliter Executor. &c. Alioqui

ſcire vos volumus pro conſtanti, quod ſi iſtuc fieri non curaveritis, bona temporalia, & omnia quæ ad baroniam ipſius Eccleſiæ pertinent, quæ donatione conſtat eidem fuiſſe collata, & quæ hactenus colligi & ſalvo cuſtodire præcipimus in commodum & utilitatem ipſius Eccleſiæ convertenda, ceſſante jam cauſa in manu noſtra totaliter capiemus, nec ulterius ſuſtinebimus, quod temporalia metat, qui ſpiritualia ad quæ ex officii ſui debito tenetur, irreverenter ſubtrahere non formidat, aut quod emolumenta percipiat, qui incumbentia ejuſdem onera ſubire recuſat, &c. Teſte, &c.

This Writ was ſent by *HENRY* the Third, to *Peter de Egueblanke* a *Savoyard*, then Biſhop of *Hereford*, who, as the Hiſtory of thoſe times relate, had never a good, but many bad qualities, that conſtantly attend men that are negligent of their duties to God and Man in this kind; how little care ſoever he took of Duty, you hear, *lac & lanam ſuſtulit, temporalia rapuit*, by which means he was grown intolerable rich; and mark what came of his Wealth, the rebellious Barons ſeized on him in his Cathedral Church at *Hereford*, and took all his Goods and Treaſure, and divided it amongſt their Souldiers: Even ſo may it fare with all ſuch Biſhops.

Now my hand's in, I will beg the Readers patience, to inform him what Pope *Damaſus*, one of the better ſorts of Popes, ſaid in an Epiſtle of his to ſuch Biſhops; and it was thus:

Primum

Primum quod curam ſibi commiſſam negligent, cum Dominus dicat; Bonus Paſtor animam ſuam ponit pro ovibus ſuis, mercenarius autem videt lupum venientem, & demittit oves, & fugit, &c. Secundo, illi Epiſcopi qui talia præſumunt, videntur mihi (ait) eſſe meretricibus ſimiles, quæ ſtatim ut pariunt, infantes ſuos aliis nutricibus tradunt educandos, ut ſuam citius libidinem explere valeant. Sic & iſti infantes ſuos, id eſt, populos ſibi commiſſos aliis educandos tradunt, ut ſuas libidines expleant, id eſt, pro ſuo libitu ſæcularibus Curis inhient, & quod unicuique viſum fuerit, liberius agunt: Pro talibus enim animæ negliguntur, oves pereunt, morbi creſcunt, hæreſes & ſchiſmata prodeunt, Eccleſiæ deſtruuntur, ſacerdotes vitiantur, & reliqua mala proveniunt. Non taliter Dominus docuit, nec Apoſtoli inſtituerunt, ſed ipſi qui Curam ſuſpiciunt, ipſi peragant & ipſi proprios manipulos Domino repreſentent. Nam ipſe ovem perditam diligenter quæſivit, ipſe invenit, ipſe propriis humeris reportavit, noſque id ipſum facere perdocuit. Si ipſe pro ovibus tantam curam habuit, quid nos miſeri dicturi ſumus, qui etiam pro ovibus noſtris commiſſis Curam impendere negligimus, & aliis eas educandas tradidimus? Corrigantur hæc (fratres) neceſſe eſt, quia, qui plus laborat, majorem mercedem accipiet.

And now I have done with Non-reſidence, one of the Peſts of the Church: I will in the next place ſhew what Dilapidations are, and the ſeveral ways the ſame are puniſhable; this being often the effect and fruit of *Non-reſidence*.

Whereas in the former Impreſſions of this Book, *Chap.7. pag.67.* I cite a Canon of Pope *Sylveſter*, whereby it is decreed, That the Revenues of the Church ſhould be diſtributed into four parts, one to the Biſhop, a ſecond to the Clergy, a third to the Repairs of the Church, and a fourth to the Poor and to the Infirm and Pilgrims. There is a Learned Perſon that has publiſh'd a Book in defence of Pluralities, but is endowed with ſo much Modeſty, that he is aſhamed to tell his Name; yet is not aſhamed to reflect upon me for writing againſt them, who in the beginning of his Third Chapter, *pag.* 155. ſays, 'It remains in the 'third place to be manifeſted, That the 'uſe of Pluralities, as now practiſed, is not 'inconvenient to the Church.

'Theſe Inconveniences, as they are urged 'and exaggerated by the Oppugners of Plu'ralities, may be reduced to theſe four 'Heads: And after he has named the four Heads, *pag.* 158. he charges, 'That the Au'thor firſt named (meaning me) hath af'firmed many things which are downright 'falſe, in other things hath betrayed a groſs 'Ignorance. The other Author is a perſon 'of too great Worth and Learning, to be 'guilty either of Fraud or Ignorance; but 'only has ſuffered himſelf to be herein 'tranſported with too much Heat and 'Zeal before he well conſidered the caſe; 'ſo that whereſoever in the following An'ſwer I ſhall charge Fraud or Ignorance 'upon the Objections, I deſire it may be 'referred to the firſt Objector.

So

So you ſee this Nameleſs Author hath done me the credit to place me in Honourable Company; but charges me to have affirmed many things that are downright falſe, and in other things to have betrayed a groſs Ignorance, but charges nothing in particular that is falſe.

But *pag.* 166. he ſaith, 'That it is ſomething 'ſhameful for a Profeſſor of Law to cite 'the Decrees of Pope *Sylveſter* as genuine, 'which were forged almoſt 500 years after 'his death.

This Learned Gentleman might have done well to have made ſome proof of this Aſſertion, for the better information of my Ignorance. Pope *Sylveſter* is reported to have been a very good Man, and lived about the end of the Third Century: And *Caranza*, a famous Canoniſt, mentions this Canon to be made by a Council of 275 Biſhops, held *intra Thermas Domitianas* at *Rome*, and confirmed by *Conſtantine* the Emperour and the Empreſs *Helena* his Mother.

And that good Pope *Sylveſter*, and *Padre Paulo* the Author of the Hiſtory of the Council of *Trent*, does affirm, That ſuch a Diviſion of the Church Revenus was made in the Year 470; but concludes, that ſome do attribute this Devotion to Pope *Sylveſter*, who was 150 years before that time: But why any body ſhould forge this Canon 500 years after *Sylveſter*'s death, which muſt be in the end of the Eighth Century, I know no reaſon, the matter being 300 years before that time, ſetled firſt by a Decretal

In his Treatiſe De rebus beneficiariis 26.

Causa 12. q. 2. de Reditibus. Epistle of Pope *Simplicius* to *Florentinus*, *Equitius* and *Severus*, Bishops, which lived about the latter end of the 5*th* Century; who says, *De reditibus Ecclesiæ vel oblatione fidelium quid deceat nescienti nihil licere permittat, sed solo Episcopo ex his una portio remittatur: duæ Ecclesiasticis fabricis & Erogationi peregrinorum & pauperum profuturæ à* Bonargro *Presbytero sub periculo sui ordinis ministrentur; ultima inter se Clericis pro singulorum meritis dividatur.*

De Epist. lib. 15. And *Gregory* the First, in his Answer to the first question made to him by *Augustine* first Archbishop of *Canterbury*, about the end of the 5*th* Century, tells him, *Mos est Apostolicæ sedis ordinatis Episcopis præceptum tradere, quod de omni stipendio quod accedit quatuor fieri debeant portiones, una videlicet Episcopo & famulæ ejus propter hospitalitatem & susceptionem, alia Clero, tertia vero pauperibus, quarta Ecclesiis reparandis.*

So that upon the whole matter it appears, by what is now and heretofore said, there was no need in the 8*th* Century to forge a Canon for this purpose in *Sylvester*'s Name; nor is there any doubt, but that by the Canon Law the Poor ought to have a share in the Revenues of the Church. Which was all I endeavoured to prove.

CAP.

CHAP. VIII.

Shews what Dilapidation is, and in what manner puniſhable, and what Remedies the Succeſſor hath.

A Dilapidation, is the pulling down or deſtroying in any manner any of the Houſes or Buildings belonging to a Spiritual Living, or the Chancel, or ſuffering them to run into ruin or decay; or waſting and deſtroying the Woods of the Church, or committing or ſuffering any wilful waſte in or upon the Inheritance of the Church. And certainly there can be nothing worſe becoming the Dignity of a Clergy-man, than Non-reſidence and Dilapidations, which for the moſt part go hand in hand. I wiſh our Church had not too much reaſon to complain of both. *Dilapidations, what?*

There have been divers Canons of the Church made againſt this Crime, as I may juſtly call it; but as in others, ſo in this, I ſhall confine my ſelf to our own Provincials: And I find in a Provincial Council or Synod held under *Edmund* Archbiſhop of *Canterbury*, in the Year of our Lord 1234. which was, as I take it, about the 18*th* year of *H.*3. a Canon to this effect: *Canon againſt Dilapidation.* Lindw. Chap. *Si Rector alicujus Eccleſiæ.*

Si Rector alicujus Eccleſiæ decedens domos Eccleſiæ deliquerit dirutas, de bonis ſuis Eccleſiaſticis tanta portio deducatur, quæ ſufficiat ad repa-

Vide Canon *Othobon* de domibus Ecclesiarum reficiendis, *in the Appendix to the twelfth Chapter of this Book*, hic in fine.

reparandam hæc, & alios defectus Ecclesiæ supplendos. Item statuimus circa illos Vicarios, qui solvendo modicam pensionem omnes Ecclesiæ habent proventus: Nam cùm ad præmissa teneatur talis portio deducta, satis poterit & debet inter debita computari: Semper tamen rationabilis consideratio sit habenda ad facultates Ecclesiæ, cum portio fuit habenda.

Now if it be demanded what Houses are meant within this Canon, the Gloss tells you, *Ut puta mansum Rectoriæ, Vicariæ & alia Edificia quæcunque, quorum Edificatio sive reparatio spectat ad ipsum Rectorem.*

Co. 5. 6, 7. Cro. Eliz. 659. *Not to repair the Church, but Chancel.*

By the Letter of this Canon the Rector is to repair the whole Church; but by the Custom of *England* the Owners of the Houses and Lands in every Parish are bound to repair the Body of the Church, and the Rector only the Chancel; unless by particular Custom it hath been otherwise: And in this Point the Common Law is kinder to the Parsons, Vicars, &c. than the Canon Law; and the Common Law being here to be preferred, annuls that part of the Canon.

2 Inst. 653.

A Canon for relief against Dilapidations.

And the Gloss upon the word *Defect' Ecclesiæ* adds, *Hæc litera potest intelligi de defectibus Ecclesiæ, quæ pertinent ad curatum ipsius Ecclesiæ in solidum, sic quod non pertineant ad alios, ut puta, in Cancella, & aliis ad onus Rectoris de jure vel consuetudine spectantibus.*

But this Canon seems only to affect the Ecclesiastical Goods: And what those might be, deserves the Judgment of the Gloss, which tells you they are such as *Jure &*

& nomine Ecclesiæ obvenientibus; talia enim bona sunt per viam tacitæ hypothecæ ad reparationem hujusmodi faciendum obligatæ. Verb. Ecclesiasticis.

And if the Goods of the Church shall not suffice, then the Glos tells us, *Si Rector bona Ecclesiastica expenderit in melioratione patrimonii sui, vel si propter nimiam diligentiam propriorum negotiorum neglexerit negotia Ecclesiæ procurare, & sic Ecclesia sit dampnum passa, tenetur satisfacere de bonis suis patronalibus, si quæ habuerit.*

But there has been made a further Question, Whether satisfaction for Dilapidations should be preferred in payment before Debts and Legacies? And as the Common Law prefers the payment of Debts before damage for Dilapidations; so the Eccleiastical Law prefers the damage for Dilapidations, before the payment of Legacies: To which hear what the Glos says; *Si Legatarij tanquam Creditores petant legata sibi relicta, & Prælatus petat sumptus reparationis Edificiorum Ecclesiæ; talis Prælatus debet præferri cæteris Legatariis:* And gives this Reason, *Nam Legata solvi non debent nisi prius deducto ære alieno.* So that the Ecclesiastical Law agrees with the Common Law in this, That Debts are to be preferred before Legacies.

The next thing considerable is, What Repairs are requirable in this case, which is answered by the Glos: *Et intellige hanc reparationem fieri debere secundum exigent' & qualitatem rei reparandæ, &c.* Verbo Reparand. hæc.

Thus

Thus far I have followed the Canon, and Gloſs thereupon: Now in the next place we will ſhew you what we have relating to this matter amongſt the Laws and Statutes of this Realm.

Waſte by Biſhops. Co. 11. 49. a.

And firſt, I find that at a Parliament at *Carliſle*, in the 35*th* year of *Edward* the Firſt, a great complaint was made againſt *Anthony*, then Biſhop of *Durham*, for waſte and deſtruction of the Woods belonging to his Biſhoprick, by gift, ſale and otherwiſe, and for erecting Forges of Iron and Lead, and making Charcoals of the Wood to be ſpent in their Iron and Lead-works, to the diſinheritance and impoveriſhing of his Church, and in prejudice of the King and his Crown, and of the Chapter of *Durham*. To which the Anſwer is, *Inhibitur per breve de Cancellaria Epiſcopo & Miniſtris ſuis, ne faciant vaſtum de contentis in petitione.*

Cauſe of Deprivation.

M. 23. *Ei inter adjudicat coram Rege.* Huntſ. 83. * *Or in the Kings Bench,* Bulſtr. 3. 158. More 917. Rot. Pat. 14 H. 3 m. 8. Bulſtr. 2. 279.

By which it appears, That if a Biſhop, or any other Clergy-man, do waſte upon the Woods or Lands of his Church, that a Prohibition may be ſued in * *Chancery* to prohibit him: For *Eccleſia eſt infra ætatem & in cuſtodia Domini Regis, qui tenetur jura & hæreditates ejuſdem manu tenere & defendere.*

And the Archbiſhop of *Dublin* was fined 300 Marks for the diſafforeſting a Foreſt belonging to his Archbiſhoprick.

Hollingſh. 181. b. 30.

And *William*, Abbot of *Weſtminſter*, in the 15*th* year of King *John*, *Anno* 1213. was deprived, becauſe he had waſted the Revenue of his Church or Abby.

And

And it ſeems by ſeveral Books of the † Common Law, * and by the Canons of the Church likewiſe, That in caſe a Biſhop, Abbot, Prior, &c, waſte the Lands, Woods or Houſes of his Church, he may be depoſed or deprived by his Superior: So that it appears clearly, that the fault in this caſe lies heavy upon thoſe that have the Viſitation and Superiority, that do not take care againſt the waſting and deſtruction of the Building, Houſes, Woods &c. of the Church; and that the Succeſſors ſhould not be put to ſeek remedy againſt Executors and Adminiſtrators, who are too active in finding ſhifts to avoid their Actions, to avoid which there is a good Law made in the 13*th* year of Queen *Elizabeth* to this effect:

† 20 H. 6. 46. a. 3 Inſt. 204. 2 H. 4. 3. b. Co. 11. 94. b. 25 E. 3. 16. a. 9 E. 4. 34. a.

* Cauſa 10. q. 2. ſi quis Caſus, *Quæſitum fuit quam pœnam debeat pati Epiſcopus quum alienat rem Eccleſiæ nulla neceſſitate cogente.* The Anſwer was, *Res ipſas Eccleſiæ propriæ reſtaurare cogatur & in Judicio Epiſcoporum dejiciatur auditus & convictus, & tanquam furti aut latrocinii reus ſuo privetur honore.* Cauſa 12. q. 2. Apoſtolicos.

That if any Parſon, Vicar, &c. ſhall make any conveyance of his goods to defraud his Succeſſor of his remedy, the like Suit is given in the Spiritual Court againſt the Grantee, as the Succeſſor ſhould have had againſt the Executors or Adminiſtrators of the Predeceſſors.

Statute againſt fraudulent Conveyances. St. 13 Eliz. c. 2.

But this Act gives no remedy at Common Law, becauſe by another Act made at the ſame Parliament, *all ſuch Grants, to defraud any perſon or perſons of their juſt actions are made void.*

St. 13 Eliz. c. 5.

So that the Plaintiff has equal remedy in both caſes: Suits for Dilapidations are moſt properly and naturally to be ſued in the Spiritual Courts; and if any Prohibition ſhould be granted, the ſame ought to be

F. N. B. 51. f.

ſuper-

ſuperſeded by a Conſultation; but this is intended where the Suit is grounded upon the Canon Law.

Action upon the Caſe at Law for Dilapidations.

But the Succeſſor may upon the Cuſtom of *England* have a ſpecial Action upon the Caſe againſt the Dilapidator, his Executors or Adminiſtrators, whereof there are multitudes of Preſidents even in the time of Popery, whereof the Reader has a taſte in the Margin.

T. 8 H. 7. rot. 69. B. R.
T. 18 H. 7. rot. 69. C. B.
P. 12 & 13 H. 8. ro. 126. C. B.
M. 16 H. 8. rot. 306. C. B.
M. 12 H. 8. rot. 730. C. B.
H. 15 Jac. rot. 474, &c.

The Cuſtom upon which the Action is grounded.

By all which it appears, that by the Cuſtom of *England*, which is the Common Law; *Omnes & ſinguli Prebendarii, Rectores, Vicarii Regni* Angliæ *pro tempore exiſtentes, omnes & ſingulas domos & edificia Prebendarum, Rectoriarum & Vicariarum ſuarum reparare & ſuſtentare, & ea Succeſſoribus ſuis reparata & ſuſtentata dimittere teneantur. Et ſi hujuſmodi Prebendarii, Rectores & Vicarii Domus & Edificia hujuſmodi Succeſſoribus ſuis ſic, ut præmittatur, reparata & ſuſtentata non demiſerunt & deliquerunt; ſed ea irreparata & dilapidata permiſerunt, Executores ſive Adminiſtratores bonorum & catallorum talium Prebendariorum, Rectorum & Vicariorum poſt eorum mortem de bonis & catallis decedentium Succeſſoribus talium Præbendariorum, Rectorum & Vicariorum, tantam pecuniæ ſummam quantam pro neceſſaria reparatione & edificatione hujuſmodi Domorum & Edificiorum expendi aut ſolvi ſufficiet, ſatisfacere teneantur.*

And upon this Cuſtom, Actions of the Caſe have been frequently brought, both anciently and of later times, and damages recovered.

And

And note, That by a Statute made in fourteenth year of Queen *Elizabeth*, it is expreſly enacted, *That all the monies and damages that ſhall be recovered for Dilapidations, are to be expended and laid out, in, and about the repair of the Houſes, &c. dilapidated, wherein the Viſitors of thoſe Churches ought to take care.* St. 14 El. c. 11.

It will not be altogether improper to conclude this Chapter with the Statute of 35 *E.* 1. entituled, *Ne Rectores proſternant arbores in Cœmeterio*; whereby it is enacted, or rather the Common Law declared in theſe words: 35 E. 1.

We do prohibit the Parſons of the Church, that they do not preſume to fell them (viz. *the Trees in the Church-yard*) *down unadviſedly, but when the Chancel of the Church wants neceſſary Reparations: Neither ſhall they be converted to any other uſe, unleſs the Body of the Church do want repair; in which caſe the Parſons of their Charity ſhall do well to relieve the Pariſhioners with beſtowing upon them the ſame Trees, which we will not command to be done, but we will commend it when it is done.* *Againſt cutting the Trees in the Church-yard.*

By this Law it appears, that the Church-yard and the Soil thereof is in the Parſon, and by conſequence the Trees are in the Parſon or Rector, that grow therein. But becauſe the Trees that grow there are for the moſt part planted there for the ſhelter and ornament of the Church from Tempeſt and Storms; therefore the Parliament has granted a Prohibition in this caſe againſt the Rectors and Parſons of Churches, that they ſhould not cut down theſe Trees for

any

any other use, but the necessary repairs of the Church and Chancel, which in truth was no more than what the Common Law enjoyned: For if the Rector had gone about to have cut them down for any other use, the Patron might have had a Prohibition; but now I conceive the Rector or Impropriator, that cuts down any Trees growing in the Church-yard for any other cause, than for the repair of the Church or Chancel, may be indicted and fined upon this Statute at the Common Law; for whatsoever may be prohibited before it is done, may be punished after it is done.

3 Inst. 205.

If the Bishops and Archdeacons in their Visitations would take care, these Dilapidations might easily be avoided, which are a great dishonour to the Clergy, and cannot be pleasing to God Almighty or good Men: And the Canon enjoyns the Archdeacons and other Officials, *Ut in Visitationibus Ecclesiarum faciendis diligentem exhibeant considerationem ad fabricam Ecclesiæ & maxime Cancell', si forte indigeant reparatione, & si quos invenerint defectus hujusmodi, certum sub pœna præfigant terminum infra quem emendentur vel suppleantur, &c.*

Cap. Archidiaconi & infra.

CHAP.

CHAP. IX.

The ninth Chapter ſhews for what Cauſes a Parſon, Vicar, &c. may be deprived by any Statute Law; and what matters are allowed for good Cauſes of Deprivation at the Common Law.

DEprivation or Depoſition is, where a man by any Statute Law, or by any Judicial Sentence Eccleſiaſtical, that hath proper Juriſdiction, is made incapable to hold or enjoy his Parſonage, Vicarage, or other Spiritual Promotion or Dignity: And the Cauſes of ſuch Deprivation or Depoſition, are properly and naturally determinable by the Eccleſiaſtical Laws of this Realm. *Deprivation and Depoſition, what.* *Where determinable.*

But becauſe generally there are Eſtates of Freehold dependant upon theſe Promotions and Dignities, and annexed to them inſeparably, which reſt at the ſole determination of the Common Law; the Courts of Common Law do ſometimes inſpect and regulate the Proceedings of the Eccleſiaſtical Courts; and where they proceed againſt the Rules of Common Law, they frequently prohibit them.

I have therefore thought fit to ſhew, what cauſes of Deprivation or Depoſition have been allowed and approved of by the Judges and Courts of the Common Law,

or by any of the Statutes of this Realm. But there are many more Causes of Deprivation by the Canons and Laws Ecclesiastical, which being out of my Profession, I shall not presume to discourse of.

Can. Apost. 42. Mortimer verf. Parker, 10 Jac.

1. If a Parson, Vicar, &c. be a common Drunkard, it is a just Cause to deprive him of his Church preferment.

Simony cause of Deprivation.

2. The Clerk that obtains any preferment in the Church by any Simoniacal Contract or Agreement may be deprived by his Ordinary, &c. as it appears at large in the fifth Chapter here before upon that Subject.

1 El. c. 2. Stat. 14 Car. 2. c 4. *To use other Forms of Prayer, the third Offence.*

3. 'That if any Parson, &c. shall refuse 'to use the Book of Common Prayer, or 'administer the Sacraments in the order 'there prescribed, or shall wilfully and 'obstinately, standing in the same, use any 'other Rite or Ceremony, Order, Form or 'Manner of celebrating the Lord's Supper, 'or other open Prayers, or shall preach, 'declare or speak any thing in derogation 'thereof, or depraving the same, or any 'thing therein contained, and having for-'merly been convicted for the like offence, 'shall upon his second conviction be de-'prived *ipso facto*.

St. 14 Car. 2. c. 4. *Neglecting to read Prayers within two Months after Induction.*

4. 'If any Parson, Vicar, &c. shall not 'within two Months next after Induction, 'upon some Lord's-day, openly, publickly 'and solemnly read the Morning and 'Evening

'Evening Prayers appointed to be read the 'same Day, according to the Book of 'Common Prayer; and after such reading, 'shall not openly and publickly, before the 'Congregation there assembled, declare his 'unfeigned assent and consent to the use 'of all the things therein contained, in such manner as is directed before here in the seventh Chapter; 'and if there be any 'lawful Impediment, then if he do not do 'the same within one Month after the Im-'pediment removed, such Parson, Vicar, &c. 'shall be deprived *ipso facto*.

5. 'If any Parson, which shall have any 'Ecclesiastical preferment, shall advisedly 'maintain or affirm directly any Doctrin 'contrary or repugnant to the 39 Articles 'of Religion, and being convented before 'the Bishop of the Dioces or Ordinary, or 'before the High Commissioners, shall 'persist therein, and not revoke his Error; 'or after such Revocation shall eftsoon af-'firm such untrue Doctrin, he may be de-'prived.

13 Eliz. c. 12. *To maintain any Doctrin against the 39 Articles of Religion.* 5 R. 2. tit. Trial 54. *Miscreants, Infidels, Schismaticks and Hereticks deprived, &c.*

6. If any person shall obtain a preferment in the Church, which is a * Miscreant, † Infidel, Schismatick or Heretick, he may be deprived.

*A Mubeliever † *An Atheist, &c.* 38 E. 3. 2. b. Dy. 8. p. 254. Co. 5. 58. a.

7. So if one be made a Parson, Vicar, &c. that is not of free Condition, but a Villain, or that is illiterate and not able to perform his duty, or that is guilty of any heinous Crime, as Murther, Manslaughter, Perjury,

Dy. 293. p. 1, 2. *Slave, Villain, Illiterate and Criminous person may be deprived.*

jury, Forgery, or that is *merè Laicus*, and not in Holy Orders, he may be deprived.

* *And so is the 54th Canon of the Apostles, expres.* Allen versus Nash, P. 13 Car. 1. B. R. Cro. Jac. 37. *Non-conformity.* Quod nota.

8. * A Parson, Vicar, &c. may be deprived for being disobedient and incorrigible to their Ordinary, &c.

9. And it was resolved by all the Judges of *England*, 2 *Jac.* That Non-conformity was a good Cause of Deprivation: and it was declared by them all, That in case any Canons were made by the Clergy for the good Government of the Church, and approved and confirmed by the King, (as they ought) that the obstinate disobeying of them was a just cause of Deprivation.

11 H. 4. 37. *Taking a second Benefice.*

10. 'If any Parson, Vicar, &c. have one 'Benefice with cure of Souls, and take 'another incompatible without a Faculty 'and Dispensation, it is a just Cause of De-'privation.

Dyer 133. p. 1. *Priest to marry was cause of Deprivation.*

11. In the time of Popery it was Cause of Deprivation for a Priest to marry; but not to have two or three Concubines, as they called them: But more of this hereafter.

3 Inst. 204. Co. 11. 98. b. 2 H. 4. 3. 9 E. 4. 34. 20 H 6. 36. 29 E. 3. 16, 17. q. 4. *Quicunque.*

12. Dilapidating the Church and Buildings, destroying the Woods, or alienating the Lands belonging to the Church by any Bishop, Abbot, Prior, Parson, Vicar, &c. have been held and adjudged just Causes of Depri-

Deprivation; and it were very fit the Canons in this caſe were put in execution.

Deprivation ipſo facto.

There may be a Queſtion ſtarted, What ſhall be intended by the words, *Deprived ipſo facto*; whether by thoſe words the Church ſhall immediately become void by the fact done, or not till Conviction or Sentence declaratory. The words *Ipſo facto* are of late time crept into Acts of Parliament; as that for ſtriking with a Weapon in a Church-yard, the party ſhall *ipſo facto* be excommunicate: And in that caſe it is made a *Quære* in *Dyer*. But in *Green*'s Caſe it is reſolved, That the Church in this Caſe ſhall be void without any Sentence declaratory, and that Avoidances by Acts of Parliament need no Sentence declaratory. But in that Caſe by the Canoniſts, *requiritur Sententia declaratoria*. And note, That after Induction the Spiritual Court cannot deprive for any Error in his Inſtitution. So if a Clerk commits Homicide, and hath his Clergy, he ſhall not afterwards be deprived for this offence. And a man may be deprived by reaſon of Degradation.

Dy. 275. b. p. 48. *Quære.* Co. 6. 29. b. Cap. *Quia incontinentiæ*, verb. *ipſo facto.* Rolls 2. 282. l. 5. Rolls 2. 305. §. 3.

I muſt confeſs, in this Chapter I may ſeem to tranſgreſs upon the Canoniſts and Civilians, as well as in ſome other; but I have gone no further upon this Subject, than what I have met with in our own Books: And I muſt agree, That the Eccleſiaſtical Courts muſt have the ſole Juriſdiction in all Cauſes of Deprivation, Depoſitions, Reſignations, &c. And yet the Judges of the Common Law have power

to correct their proceedings, if they ſhall proceed againſt the Rules of the Common Law, which is the reaſon we meet with theſe things in our Books, and it may be ſome advantage to the *Civilians* to know how far the Common Law approves of their proceedings.

There are by the Canon Law divers other Cauſes of Deprivation; but it is out of my Province, and would be too long for this Diſcourſe to reckon them all up. And having ſaid what I have to ſay upon this Subject, I ſhall proceed next to ſhew, what Leaſes, Parſons, Vicars, and other Eccleſiaſticks may make at this day of the Glebes, Tythes, Farms, &c. and within the danger of what Statutes they may fall.

Rolls 2.282. f.345. After Induction a man cannot be deprived for any fault in his Inſtitution.

CAP.

CHAP. X.

The tenth Chapter shews, What Leases Parsons, Vicars, and other Ecclesiastical Persons may make of their Glebe, Tythes, Farms, &c. and what Farms they may take, and within the danger of what Statutes they may fall.

HAving undertaken this Work chiefly in favour of the Parsons and Vicars, I designed to have medled with no other Orders of the Church but those only; but having in many other things been enforced to intermingle the concerns of other Orders with those of the Parsons and Vicars, I shall beg the Readers pardon, that in this Chapter, where I am to treat of the Leases which may be made by Parsons and Vicars, I likewise take in all other Orders of the Church with the Colledges; the Learning concerning Leases being of use, and necessary for all people to know, and which I shall in this Chapter put into as good a Method as the Subject matter will permit. *What Leases Clergy-men may make.*

And because the Learning of these Leases will depend upon several Statutes, it will not be amiss first to examin what Leases or Alienations the several persons we have to do with in this Chapter, might have made at Common Law before the Statutes, and then to consider where, or in what man-

ner, the ſeveral Statutes have enlarged, abridged, or reſtrained their power at Common Law.

At Common Law. 1 Inſt. 45. a.

And firſt, at the Common Law, no Biſhop, Abbot, Prior, Dean, Prebend, or other ſingle Corporation, could make any Alienation or Leaſe to bind their Succeſſors, without the confirmation of their Chapter, Covent, &c.

The enabling Act of 32 H. 8. cap. 28.

The firſt Statute that made any alteration in theſe caſes, was the Statute of 32 *H.* 8. which is commonly called the Enabling Statute; whereby it is enacted,

'That all Leaſes then after to be made 'of any Mannors, Lands, Tenements or 'Hereditaments, by Writing under Hand 'and Seal, for Term of years, or for Term 'of Life, by any Parſon or Parſons of the 'full Age of Twenty one years, having 'any Eſtate of Inheritance either in Fee-'ſimple or Fee-tail, in their own rights, 'or in the right of their Churches, &c. ſhall 'be good and effectual in the Laws againſt 'the Leſſors, their Wives, Heirs and Suc-'ceſſors.

'Provided that that Act ſhall not extend 'to any Leaſe of any Mannors, &c. where 'any old Leaſe ſhould be in being, unleſs 'the ſame expire, be ſurrendred or ended 'within one year after the making of ſuch 'new Leaſe, nor ſhall extend to any Grant 'to be made of any Reverſion of any 'Mannors, &c. nor to any Leaſe of any 'Mannors, &c. which have not moſt commonly been letten to Farm, or occupied

'by

'by the Farmers thereof, by the ſpace of 'Twenty years next before ſuch Leaſe 'thereof made, nor to any Leaſe to be 'made without impeachment of Waſte, or 'to any Leaſe to be made above the 'number of three Lives, or Twenty one 'years at the moſt, from the day of the 'making thereof; and that upon the ma-'king of every ſuch Leaſe there be reſerved 'yearly, during the ſaid Leaſe, due and 'payable to the ſaid Leſſors, their Heirs and 'Succeſſors, to whom the Reverſion ſhall 'appertain, &c. ſo much yearly Farm or 'Rent, or more, as hath moſt accuſto-'mably been yielded and paid for the 'ſaid Mannors, &c. ſo to be letten with-'in Twenty years next before the Leaſe 'thereof made, &c.

'Provided this Act ſhould not extend to 'give any liberty or power to any Parſon, 'Vicar, &c. to make any Leaſe or Grant of 'any of their Meſſuages, Lands, Tythes, &c. 'or in any other manner than they ſhould 'or might have done before of the making 'the ſaid Act.

So now, where before the making of this Act, no Archbiſhop, Biſhop, Archdeacon, Dean or Prebend, could have made any Leaſe to have bound his Succeſſors without the confirmation and conſent of their Chapters, &c. as aforeſaid: Now by this Act they are enabled to make Leaſes for three Lives, or One and twenty years, without any confirmation at all with theſe Qualifications:

What qualities ſuch Leaſes muſt have.

1. Such

Muſt be in Writing indented.

1. Such Leaſe muſt be made by Writing Indented, and not by Parol or Deed Poll.

Muſt begin from the making, or day of making.

2. It muſt be made to begin from the making, or day of the making of ſuch Leaſe.

Old Leaſe muſt expire within a year.
Co. 5. 2. b.

3. If there be any old Leaſe in being at the time of the making of ſuch Leaſe, it muſt expire, be ſurrendred or ended within a year after the making of ſuch new Leaſe; and ſuch ſurrender muſt be abſolute, and not upon Condition,

Muſt not be a double Leaſe.

4. There muſt not be a double Leaſe in being at one and the ſame time, the one for years, and the other for Lives.

Of what things ſuch Leaſe may be.
Co. 5. 3. 2.
More 738.
Talentine verſ. Denton.
H. 2 Jac. B. R.

5. Such Leaſe muſt be of Lands manurable or corporeal, which are neceſſary to be letten, and out of which a Rent may be reſerved, and not of things that lye meerly in Grant; as Fairs, Markets, Tythes, Tolls, Franchiſes, Advowſons, &c.

Of Lands uſually letten.

6. Such Leaſe muſt be of Lands, &c. which have moſt commonly been letten to Farm; or occupied by the Farmers thereof for the more part of Twenty years before the making of ſuch Leaſe: So if they have been ſo Let for Eleven years within Twenty years next before the making of the new Leaſe, it ſuffices: And a letting to Farm by Copy of Court-Roll, is a ſufficient letting to Farm

Farm within this Statute, to enable the making of ſuch new Leaſe. Co. 6. 37. b.

7. There muſt be reſerved upon every ſuch Leaſe, and payable during the continuance thereof to the Leſſor, his Succeſſors, &c. ſo much Farm or Rent as hath moſt accuſtomably been yielded and paid for the Land ſo demiſed within Twenty years next before ſuch Leaſe made: So that it ſufficeth, if the yearly Rent or Farm be reſerved, though Heriots and other caſual Services be omitted; ſo if a greater Rent than formerly be reſerved, it ſufficeth. But if the Leſſor reſerve a leſs Rent than the ancient, during his Life, and after the full Rent, yet it is naught, becauſe it muſt be reſerved during the whole Term: So if Lands uſually letten be demiſed with any other Lands, &c. though a Rent be reſerved that exceeds the value of thoſe Lands and the old Rent; yet ſuch Leaſe is not good againſt the Succeſſor within this Law. But if the Rent were formerly reſerved to be paid at four ſeveral days, and by the new Leaſe be reſerved to be paid all at one, ſo the whole Rent be reſerved yearly, it is well enough.

The accuſtomed Rent muſt be reſerved.

Co. 6. 37. b.

Ibid. Co. 5. 6. a.

Co. 5. 5. b.

Vide Co. 8. 70. b. &c.

What Reſervations are good.

Co. 5. 37. b.

If a Biſhop, &c. have two diſtinct Mannors, that have anciently been demiſed together, and one entire Rent reſerved for both Mannors; and theſe being out of Leaſe, the Biſhop, &c. may demiſe them ſeverally, reſerving ſeveral Rents amounting to the whole ratably: And theſe have been Adjudged lately in the *Common Pleas* to be good, and

Trin. 26 Car. 2. C. B. Thredneedle verſ. Linam.

H.27 Car.2. in B.R. This Case is put in the modern Rep. p.203. but imperfectly reported, *Ideo quære.*

and affirmed in Error in the *Kings Bench*; and by the same reason, if a Termor for life should Lease part for years, and then surrender and accept a new Lease, rendring the ancient Rent, it would be a good Lease, *tamen quære:* For of that part leased by the Termor, there would be two Leases on foot together; but if the new Lease were only of the Lands not demised by the Termor, then it seems good.

Such Lease must not be without impeachment of Waste.

8. Lastly, Such Lease must not be without impeachment of Waste; and therefore a Lease to one for life, remainder to another for life, remainder to a third for life, is not good against the Successor, though but for three Lives, because the Remainders make the present Tenants dispunishable for Waste for the time.

Parsons and Vicars excepted.

But Parsons and Vicars being excepted in this enabling Law, are left as they were at the Common Law; so that they could make no Lease to bind the Successor without the confirmation of the Bishop and Patron, till the Statute of 13 *Eliz.* which we shall speak of hereafter.

Co.8.70.b.

And a Lease for 99 years, if three Lives Lives live so long, is not good within this Statute.

But this Act, as appears by what hath been said, conferred a new Power upon single Corporations; but did not in any thing restrain their ancient Power in making long Leases and Alienations of their very Scites, Demesnes, &c. with Confirmations

tions, as aforeſaid, which was a great prejudice to the Church in general, a means of Dilapidations, and a great hindrance of Hoſpitality: And therefore,

In the firſt year of Queen *Elizabeth* it was enacted, 'That all Gifts, Grants, Feoffments, Fines and other Conveyances and 'Eſtates from the firſt day of that preſent 'Parliament, to be had, made, done or 'ſuffered by any Archbiſhop or Biſhop of 'any Honours, Caſtles, Mannors, Lands, 'Tenements, or other Hereditaments, being 'part of the Poſſeſſions of his Archbiſhop-'rick or Biſhoprick, or united, appertain-'ing or belonging to any the ſame Arch-'biſhopricks or Biſhopricks, to any perſon 'or perſons, Bodies Politick or Incorporate '(other than the Queens Majeſty, her Heirs 'and Succeſſors) whereby any Eſtate or 'Eſtates ſhould or might paſs from the ſaid 'Archbiſhops or Biſhops, or any of them, 'other than for the Term of Twenty one 'years, or three Lives, from any ſuch time 'as any ſuch Leaſe, Grant or Aſſurance 'ſhall begin, and whereupon the old ac-'cuſtomed yearly Rent or more ſhall be 'reſerved and payable yearly during the 'ſaid Term of Twenty one years, or three 'Lives, ſhall be utterly void and of none 'effect, to all intents, conſtructions and 'purpoſes; any Law, Cuſtom or Uſage to 'the contrary thereof in any wiſe notwith-'ſtanding. 1 Eliz. c. 19. More 107. *Biſhops reſtrained.*

Note the Exception, which gives, or rather reſerves the power to grant, &c. to the Queen, &c. was made void by a Statute made 1 *Jac.* 1 Jac. c. 3.

And

Leaſes in other Forms not void, but avoidable. Smalwood and Sale verſ. l'Eveſque Lich. & alios. P. 31 El. rot. 21. 65. Co. 3. 59. 1 Inſt. 45. a. Cro. Jac. 95.

And note alſo, that though this Statute enacts, That all Leaſes made in any other form ſhall be void and of none effect to all intents and purpoſes; yet it has been Adjudged, that it is only to be intended as againſt the Succeſſors, and that Leaſes made in other forms ſhall be good notwithſtanding againſt the party himſelf that makes them, and may be affirmed by the Succeſſor by the Receipt of the Rent reſerved thereupon.

1 Eliz. *A private Act.* Co. 4. 76. Co 5. 2. b. Cro. El. 874. More 253.

And note, this is a private Act of Parliament, that muſt in all caſes be pleaded, and cannot be given in Evidence.

And note alſo, that though this Statute do not reſtrain demiſing of any Lands not formerly demiſed; yet it does it by implication: For the accuſtomable Rent muſt be reſerved, and unleſs accuſtomably let, there cannot be an accuſtomable Rent; and Leaſes within this Statute muſt have all the Reſtrictions in that of 32 *H.* 8. before mentioned.

Of what things ſuch Leaſes may be made. Co. 5. 3. a.

And it muſt be of things manurable, as hath been ſaid, out of which a Rent may be reſerved: But ſome are of Opinion, that Tythes or things not manurable may be demiſed for Twenty one years, becauſe an Action of Debt will lye upon the Contract: And ſo it was Adjudged, as a Serjeant at Law informed me, in the caſe of the Precentor of *Pauls* about 17 *Jac.* and that the Succeſſor ſhall have an Action of Debt upon this Contract, and is good within the Statute of 32 *H.* 8. *cap.* 28. And I have ſeen a Report of a Caſe in the 20 *Jac.* in the *Common*

More 778. *Sir* Timothy Tourneur, *Serjeant le Roy.*

See the Caſe, Palmer 104.

Common Pleas, that it was ſo Adjudged; and ſee *Leys* Rep. 76. That *Yelverton*, *Williams* and *Tanfield* were of the ſame Opinion, that it was good for years.

Upon this Statute, and the former, it has been held, That Archbiſhops and Biſhops may with confirmation of the Dean and Chapter make concurrent Leaſes, that is, notwithſtanding there be a Leaſe in being for Twenty one years, they may make a new Leaſe of the ſame Lands to another for Twenty one years from the making thereof; and this being confirmed as aforeſaid, ſhall bind the Succeſſor, the other things being obſerved in it: But Sir *Edward Coke* excepts the concurrent Leaſes, as to thoſe other things. 1 Inſt. 45. a. *Concurrent Leaſes.* More 66. 1 Inſt. 45. a.

And Sir *Edward Coke* is of Opinion, That like concurrent Leaſes may be made by Deans, Prebends, &c. with Confirmation: But ſome Learned men are not ſatisfied concerning concurrent Leaſes, becauſe by theſe concurrent Leaſes the Succeſſor loſes his remedy for his Rent by diſtreſs during the former Term, and the Tenant may be inſolvent as to an Action of Debt: But a concurrent Leaſe for Lives is not good, becauſe upon ſuch Leaſe the Leſſor would have no remedy for his Rent. 1 Inſt. 45. a. More 253. Cro. Eliz. 141.

The next Reſtrictive Law is that of 13 *Eliz.* whereby it is enacted, 'That 'from thenceforth all Leaſes, Gifts, Grants, 'Feoffments, Conveyances or Eſtates to be 'made, had, done or ſuffered by the 'Maſter: 13 Eliz. ca. 10. *The Reſtrictive Law againſt Leaſes of Deans, Prebends, &c.*

'Masters and Fellows of any Colledge, 'Dean and Chapter of any Cathedral or 'Collegiate Church, Master or Guardian 'of any Hospital, Parson, Vicar, or any 'other having a Spiritual or Ecclesiastical 'Living, or any Houses, Lands, Tythes, 'Tenements or other Hereditaments, being 'any part of the Possessions of any such 'Colledge,&c. or any wise appertaining or 'belonging to the same, or any of them, 'to any person or persons, Bodies,&c. (other 'than for the Term of Twenty one years, 'or three Lives, from the time as any such 'Lease or Grant shall be made or granted, 'whereupon the accustomed yearly Rent 'or more shall be reserved and payable 'during the said Term) shall be utterly 'void,&c.

Co. 5. 14. b.

The penning of this Act; and that of 1 *Eliz.* before-mentioned, being in effect the same in substance, the construction is the same in effect; but in this Act there was no saving of Grants to the King, and therefore this Act being for the publick Good, had restrained other Grants to him not warranted by this Statute, though 1 *Jac. cap.* 3. had never been made.

Parsons and Vicars restrained by this Law.

And here note, That as the Parsons and Vicars had not their Power any wise enlarged by the Statute of 32 *H.* 8. so they had no restriction upon them till this Act; but from henceforth they are restrained from making any Lease or Grants, other than for Twenty one years or three Lives, with the Qualifications above-mentioned in

in the Statutes, and such Leases must be confirmed by the Patron and Ordinary, because excepted in the enabling Statute of 32 *H.* 8. before.

And whereas after the making of this Statute, Heads of Colledges, Deans, Prebends, &c. might have made concurrent Leases, as well as Bishops might: There is a *Proviso* in the Statute of 18 *Eliz.*

'That all Leases then after to be made by any the aforesaid Eccleſiastical, Spiritual or Collegiate Persons, or others of any of their Eccleſiastical, &c. Lands, &c. whereof any former Lease for years is in being, and not expired, surrendred or ended within three years next after the making of any such new Lease, should be utterly void, frustrate, and of none effect, any Law, &c. 18 Eliz. c. 11. *No concurrent Lease, but within three years before the former ends.*

By this *Proviso*, it should seem, the Parliament was of Opinion, that concurrent Leases might be made; but has by this *Proviso* so restrained them, that they cannot be made but within three years before the Determination of the former.

But Bishops are conceived not to be comprehended within this *Proviso*; for though the words are general enough, yet the particulars mentioned before the general words being of an inferiour rank, the general words cannot draw in the more worthy. *Bishops not in this Act.*

Which Bonds and Covenants ſhall be void.

Aud there is a Proviſion in this Act of 18 *El.* 'That all Bonds and Covenants then 'after made for the making or renewing 'any Leaſe contrary to the intent of that 'Statute, or of the Statute of 13 *Eliz. c.* 10. 'ſhould be utterly void.

13 Eliz. c.20.

Leaſes of Parſons to be void by Non reſidence.

In the 13*th* year of Queen *Elizabeth*, there is an Act of Parliament made, whereby it is enacted, 'That no Leaſe made 'after the 15*th* day of *May* following, of 'any Benefice or Eccleſiaſtical Promotion 'with Cure of any part thereof, and not 'being impropriated, ſhould endure any 'longer, than while the Leſſor ſhould be 'ordinarily reſident and ſerving the Cure 'of ſuch Benefice without abſence above 'Fourſcore days in any one year; but that 'every ſuch Leaſe [*ſo ſoon as it, or any part 'thereof, ſhould come to any poſſeſſion above for-'bidden, or*] immediately upon ſuch abſence 'ſhall ceaſe and be void, and the Incumbent ſo offending ſhall, &c. loſe one years 'profit of his ſaid Benefice, to be diſtributed by the Ordinary to the Poor of the 'Pariſh.

Theſe words within the [ ] are repealed by 14 Eliz. c.11.

Charging Parſonages, void.

And by the ſame Statute it is further enacted, 'That all charging of ſuch Bene-'fices with Cure then after with any pen-'ſion, or with any profit out of the ſame to 'be yielded or taken, other than Rents re-'ſerved upon Leaſes, ſhould be void.

Where a Parſon may demiſe and be Non reſident.

'But where any Parſon ſhould be qualified to have two Livings, he may demiſe 'the one of them, where he is not ordinarily reſident, to his Curate only, that ſhall 'there

'there ſerve the Cure. And ſuch Leaſe ſhall 'endure no longer than during ſuch Curates 'reſidence without abſence above Forty days 'in any one year.

And by 14 *Eliz.* it is enacted, 'That all 'Leaſes, Bonds, Promiſes and Covenants of 'and concerning Benefices and Eccleſiaſtical 'Livings with Cure to be made by any 'Curate, ſhall be of no other or better 'force, validity or continuance, than if the 'ſame had been made by the beneficed per-'ſon himſelf, that ſhall demiſe the ſame to 'ſuch Curate. 14 El. cap. 11. *Leaſes, Bonds and Covenants to be void.*

And by the ſame Statute it is enacted, 'That the reſtrictive Statute of 13 *Eliz.* 'c. 10. before, ſhall not extend to any Grant, 'Aſſurance, or Leaſe of any Houſes be-'longing to any the perſons, &c. in the ſaid 'Stat. of 13 *El.*) nor to any Grounds to any 'ſuch Houſes appertaining, &c. in any City, 'Borough, Town Corporate, or Market 'Town, or the Suburbs of any of them; 'but that all ſuch Houſes and Grounds may 'be granted, demiſed and aſſured, as they 'might have been before the making of the 'ſaid Act, ſo always as ſuch Houſe be not 'the Capital, or Dwelling-houſe uſed for 'the Habitation of the Parſons, &c. nor have 'above ten Acres to the ſame. *Houſes, Incorporations, &c. how to be leaſed.*

'Provided, That no Leaſe be made by 'virtue of this Act in reverſion, nor with-'out reſerving the accuſtomed yearly Rent 'at leaſt, nor for a longer Term than Forty 'years at moſt, charging the Leſſee with 'repairs, and no alienation in Fee, unleſs *Not to leaſe in Reverſion.*

Lands of as good yearly value be ſetled,&c. in lieu thereof.

Bonds, Contracts, Covenants, Promiſes where to be void.

There is likewiſe another *Proviſo* in this Act, 'That all Bonds, Contracts, Promiſes 'and Covenants to be made for the ſuffer- 'ing or permitting any perſon to enjoy any 'Benefice or Eccleſiaſtical Promotion with 'Cure, or to take the profits or fruits there- 'of, other than ſuch Bonds and Covenants 'as ſhall be made for aſſurance of any 'Leaſe heretofore made, ſhall be of no 'other force than Leaſes made by the ſame 'perſon.

18 Eliz. c. 11.

And by another Statute made in the 18*th* year of the ſame Queen *Elizabeth* it is enacted, 'That after Complaint made to 'the Ordinary, and Sentence given upon 'any Offence committed by the Incumbent 'againſt the Statute of 13 *Eliz. c.* 20. where- 'by he ſhall or ought to loſe a years profit 'of his Benefice,&c. That then the Ordinary 'within two Months after ſuch ſentence 'and requeſt made by the Churchwardens 'of the Pariſh, where, &c. or one of them 'ſhall grant the Sequeſtration of ſuch pro- 'fits to ſuch Inhabitant or Inhabitants with- 'in the ſame Pariſh,&c. as to him ſhall ſeem 'meet,&c.

Every Pariſhioner may take advantage.

'And that upon default of the Ordinary, 'it ſhall be lawful for every Pariſhioner,&c. 'to retain, &c. his Tythes, and for the 'Churchwardens to enter upon the Glebe- 'land Rents and Duties of every ſuch Be- 'nefice to be employed to the uſe of the 'Poor, &c. until ſuch time as Sequeſtration

ſhall

'ſhall be Committed, by the Ordinary; 'and then the Churchwardens and Pariſhioners to account to ſuch to whom the 'Sequeſtrarion ſhall be committed, who is 'to employ the whole Profits according to 'the Act, upon pain to forfeit the double 'value of the profits withholden, to be reco-'vered in the Eccleſiaſtical Court by the 'Poor of the Pariſh.

Having thus for the Readers ſatisfaction given him an Abſtract of all the Statutes concerning the Leaſes of Eccleſiaſticks of all kinds, I ſhall briefly ſum them all up, and proceed to take a view of ſuch other Statutes as the Parſons, Vicars, &c. are in any manner in danger of.

What Leaſes may be made by Biſhops and Archbiſhops.

Upon the whole matter it appears, that Archbiſhops and Biſhops may make Leaſes for Twenty one years, or for one, two or three Lives, with the qualifications beforementioned without any Confirmations at all: And they may make concurrent Leaſes for Twenty one years, upon Leaſes for Twenty one years from the making, with confirmation of the Dean and Chapter, with ſuch Qualification as is aforeſaid, though there be above three years in being of the old Leaſe at the time of the making the new; and where the Biſhop has two Chapters, there the concurrent Leaſe muſt be confirmed by both Chapters; unleſs it be as it was in the Biſhop of *Waterford*'s Caſe, which was thus:

The Biſhop of *Waterford* had long ago the Biſhoprick of *Liſmore*, and the Chapter united to that of *Waterford*: And in all Grants made of the Lands belonging to *Liſmore* that Chapter only confirmed, and all Grants made of the Lands anciently belonging to the Biſhoprick of *Waterford*, the Chapter of *Waterford* only confirmed: And becauſe the Union was not extant, all the Judges held the confirmation of the one in manner aforeſaid was good; for it ſhall be intended, that it was ſo provided for upon the conſolidation: But otherwiſe all the Judges held, That both Chapters ought to have confirmed.

Co. 12. 71. a. b.

Dyer 282. p. 26.

Ibid. But if a Biſhop had two Chapters, and one of them ſurrenders, is ſuſpended or diſſolved, the confirmation of the other ſuffices.

M. 14 & 15 El. There is a Caſe in Mr. Juſtice *Harpur*'s Reports, where the Caſe is put, That a Biſhop made a Leaſe dated 2 *die Maij*, confirmed the third day, and ſealed the fourth day of *May*, and held a good Leaſe and well confirmed.

Harpur's Rep. ibid. But a confirmation by the Dean and Chapter after the death of the Biſhop, comes too late, by *Catlyne*, *Suthcoate* and *Windham* againſt *Wray*.

T. 6 El. Mo. 66. But if a Biſhop make ſeveral concurrent Leaſes, and the latter is firſt confirmed, and after the firſt is confirmed; in this caſe the firſt Leaſe ſhall be preferred, becauſe nothing paſſes by the confirmation in point of Intereſt, but a meer conſent.

If

If a Bishop make a Grant to the King, which is confirmed by the Dean and Chapter before the Grant is inrolled; this is well enough. T. 8 Jac. Scac. Sir *Edw. Dimocks* Case. Rolls 1.477. h. 7.

But Note, That a Bishop cannot make a concurrent Lease for life, though upon a precedent Lease for years; nor a concurrent Lease for years, where there is a Lease for life in being. Cro. El. 141. More 253.

Leases by Deans Prebends, Colledges, &c.

Deans, Prebendaries, Heads of Colledges, Masters of Hospitals, and other Ecclesiastical Persons mentioned in the Statute of 13 *Eliz. c.* 10. may make Leases for 21 years, or any lesser number of years, or for one, two or three Lives in possession, according to the Qualifications above-mentioned; and they may make concurrent Leases as Bishops may with Confirmations; but they must be within three years of the determination of the former Term by expiration, surrender, or otherwise: So that in this point the Bishop has the advantage. 18 Eliz. c. 10.

And though the Enabling Statute of 32 *H.* 8. gives power to make Leases, to hold from the making or day of the making; yet the Restrictive Statute of 13 *Eliz.* makes them void, if they be not made to hold from the making, and not from the day of the making; *quod nota:* But the Leases of Bishops and Archbishops are not within that Act; but the Act of *primo* of the Queen is, That all Leases should be void, other than for 21 years or three Lives from the time of the commencement. Note the different Pennings. 13 Eliz. c. 10.

Concurrent Leaſes, and who is to confirm Leaſes.
1 Rolls 481. p.q.r.
Dy. 221.p.18. 357. p.42.
Plow. 528.
Dyer 61.p.30.
Co. 5.81.a.

And foraſmuch as all concurrent Leaſes of any Biſhop, Dean, Prebend and Archdeacon are to be confirmed, it is convenient to let the Reader know who is to confirm the ſame; therefore for the Readers ſatisfaction, he is to know that the Leaſes of Biſhops and Archbiſhops are to be confirmed by the Dean and Chapter, or Deans and Chapters, if there be ſeveral Chapters.

Who are to confirm Leaſes.

Grants made by a Prebend, are to be confirmed by the Biſhop, Dean and Chapter.

The Grants made by Deans, are to be confirmed by the Biſhop and Chapter.

The Grants made by the Archdeacon, by the Biſhop, Dean and Chapter.

The Grants of Parſons and Vicars, with their Patrons and Ordinaries.

And Grants by the Incumbent of a Donative, by the Patron alone.

But if a Parſon make a Leaſe, which is confirmed by the Biſhop only, who is Patron, without the Dean and Chapter, which ought to have joyned, it ſhall bind the Succeſſor during the Lives of the Biſhop and Incumbent, although the Biſhop be tranſlated.

But Grants by Parſons, Vicars, Prebends, &c. before Induction or Inſtallation, &c. although confirmed, are not binding to the Succeſſor.

But if the King be Patron of a Prebend, then the King and Dean and Chapter, and not the Biſhop, ought to confirm the Grant.

A Leaſe made by a Prebendary, Parſon, Vicar, &c. may be confirmed for part of the Term, if it be for years, that is, confirm the Land to the Leſſee for ſo many years of the Term; but if the Term be confirmed for part of the Term, it were abſurd and repugnant, and ſhould be good for the whole Term: And as ſuch Leaſe may be confirmed for part of the Term, ſo it may be for part of the Land. Co. 5. 81. a. Dyer 72. a. b. Cro. El. 472.

If a Parſon, &c. make a Grant, which is confirmed by the Patron and Ordinary, and after be deprived; yet the Grant is good. 1 Rolls 476. l. 1, 2.

A Husband ſeized in the right of his Wife of an Advowſon, the Parſon makes a Leaſe warranted by the Statutes before-mentioned, and the Biſhop and Husband confirm it; this ſhall not bind the right of the Wife but during the Husbands life, but that the Succeſſor after his death will avoid it, that comes in by the Preſentation of the Wife. Ibid. 479. n. 1.

So if Tenant in tail, being Patron, confirm the Grant of the Parſon with the Biſhop, this ſhall not bind the Incumbent of the Iſſue in tail. Ib. 480. n. 2, 3.

If an Uſurper preſent, and confirm the Leaſe of his Incumbent with the Biſhop, and after is removed by *Quare Impedit*, *&c.* this ſhall not bind the Clerk of the true Patron. Ibid. n. 4.

If the true Patron grant the next Avoidance, and then confirm the Grant of the Parſon, who after dies; the Incumbent preſented by him that had the next Avoidance ſhall avoid the Leaſe, and his very entry upon the Leſſee avoids the Leaſe for ever. Cro. Car. 582. 1 Rolls 480. n. 5.

If

Cro.El.430. If the Parſon makes a Leaſe to the Patron, which is confirmed by the Biſhop; Co.5.15.a. this is not good; but if the Patron grants it over, it amounts to a Confirmation.

1 Roll.481.p.1. If a Prebend, Parſon or Vicar make a Leaſe, and the Biſhop being Patron, confirms it without the Dean and Chapter; yet this ſhall bind the Biſhop and all the Prebends, Parſons, &c. which he ſhall Collate.

Cro.El.18. If a Parſon had made a Leaſe for above 21 years before the Statutes of 13 and 14 *Eliz.* which had been confirmed after; this had been good, and not within the reſtriction of thoſe Laws.

1 Leon.233. Quære. If a Parſon leaſes where there are two Patrons, both ought to confirm, as ſhould ſeem.

Cro.Car.38. If the Patron and a ſucceeding Biſhop confirm the Leaſe of the Parſon, it is good enough.

Dy.106.p.21. Quære. A Prebend made a Leaſe, reciting that it was with the conſent of the Biſhop, who ſigned and ſealed the Leaſe to the Leſſee, but was no party to the Deed, *quære* if good.

And having ſaid thus much of Confirmations, let us ſee, what Leaſes a Parſon or Vicar may make at this day, conſidering all the before-mentioned Statutes.

Leaſes by Parſons and Vicars. And firſt, it is to be obſerved, That at and by the Common Law a Parſon or Vicar might have granted or charged his Glebe in Fee-ſimple, with the confirmation of the Patron and Biſhop; but being excepted out of

of the Enabling Statute of 32 *H.* 8. he could never make any Leaſe or Grant to bind their Succeſſors, without ſuch Confirmation; then by the Statute of 13 *Eliz.* Parſons and Vicars are reſtrained: So that they cannot grant but for 11 years, or three Lives from the making of ſuch Leaſe, and not from the day of the making, as is before obſerved; and theſe Leaſes and Grants muſt be with the confirmation of the Patron and Ordinary, with all the qualifications expreſſed in the beginning of this Chapter. 32 H. 8. c. 28. 13 Eliz. c. 10.

And it ſhould ſeem, they may make concurrent Leaſes, as Deans, Prebends, &c. may do within three years of the end of the former Leaſes.

It has been a Queſtion, Whether a Parſon or Vicar at this day can make any Leaſe at all to bind his Succeſſor?

For by the Statute of 13 *Eliz. cap.* 20. it is enacted, *That Leaſes of Parſons, Vicars, &c. that have Cure of Souls, ſhall endure no longer than they ſhall be ordinarily reſident and ſerve the Cure; and that if ſuch Parſon, &c. ſhall be abſent from their Cure above Eighty days in one year, that then ſuch Leaſe ſhall ceaſe and be void.* 13 El. cap. 20.

Now when a Parſon dies, and 80 days incur, and this being a Law for the advancement of Religion and Hoſpitality, to avoid Dilapidations, it ſhall have an equitable conſtruction for the preferring theſe ends: Therefore ſome have held, That the death of the Parſon, Vicar, &c. after 80 days have incurred

incurred from their deaths, ſhall make all their Leaſes and Grants void, though never ſo ſufficiently confirmed; and rely very much upon the Preamble of the Statute, which begins, *That the Livings appointed for Eccleſiaſtical Miniſters, may not by corrupt and indirect dealings be transferred to other uſes; Be it enacted, &c.* But by theſe Leaſes it is apparent the profits are converted to other uſes, &c.

Parſon Leaſes, which is confirmed, and dits.

But others have held the contrary Opinion, becauſe ſuch abſence is not voluntary, but by the Act of God, and regularly theſe cannot be ſaid abſent that are not *in eſſe.*

Cro.El.123. And though *Crook* report *Mott* and *Hale*'s Caſe adjudged in point, that their Leaſes are void by death; yet *More* reporting the ſame Caſe, ſays, *As to the matter in Law the Judges were divided two againſt two, and that the Judgment was given upon a miſrecital of the Statute.*

More 270.

Bayley verſus Munnes. T.24 Car.2. B.R. Quære. Dy.372.p.11. And this Point, as I am informed, came lately in queſtion in the *Kings-Bench*, and was adjudged, that death doth not avoid ſuch Leaſes. *Ideo quære inde.*

When Parſons Leaſes ſhall be void by Non-reſidence.

There is a *Quære* in *Dyer*, Whether ſuch Leaſes ſhall be void upon 80 Days abſence *ab initio*, or but from the time of abſence by 80 days; but it ſeems to me with ſome clearneſs, that it ſhall only be void from 80 days abſence, and not *ab initio*.

For firſt, the words of the Statute are, *That ſuch Leaſe ſhall endure no longer than the Leſſor ſhall be ordinarily reſident, &c.* So that till

till then it is to endure; and the Statute cloſes, That upon ſuch abſence the Term ſhall ceaſe, which it could not do, if it had not a being before; for a thing cannot ceaſe to be, that has not been.

Dy. 177. p. 31. Quære.

But another *Quære* may be ſtarted in this Caſe upon the Reaſon in *Lincoln Colledge* Caſe, Whether ſuch Leaſe ſhall be void againſt the preſent Incumbent that made it, or only againſt his Succeſſors.

Whether void againſt the Parſon himſelf. Co. 3. 59. b. 60. a.

But it ſeems to me with ſome clearneſs, that the intent of the makers of this Act was, to make ſuch Leaſe void againſt the Leſſor himſelf upon ſuch abſence: For, as before is ſaid, the Statute ſays, *It ſhall endure no longer*, which is a Term of limitation, and that immediately upon ſuch abſence the Leaſe ſhall ceaſe and be void; and it cannot ceaſe immediately upon the abſence, and yet be good during the life of the Incumbent.

And there has been ſome late Opinions, as I have heard, againſt the Reſolution in Lincoln Colledge *Caſe.*

But in the Caſe of *Revel verſus Hart*, *H.* 43 *Eliz. B. R.* the Court held the contrary, as my Reporter ſays. *Ideo quære.*

Dy. 372. p. 11. Quære.

If any Parſon, Vicar, &c. be ſuſpended, inhibited, or diſabled to ſerve the Cure by the ſpace of 80 days in a year; this ſhall not make ſuch Leaſe void, for the not ſerving the Cure muſt be voluntary.

Dobbins verſus Gerrard. P. 39 El. B. R.

And it has been held, That if a Parſon be reſident, and do not ſerve the Cure, or ſerve the Cure and be abſent by 80 days, that in both theſe caſes it will make ſuch Leaſe void.

Though

Though this Statute upon Eighty days absence makes such Lease void made by Parsons and Vicars, and says nothing of Confirmation; yet a confirmation of the Patron and Ordinary in this case seems not to amend the matter; for if the Lease be void, the Confirmation is of no avail.

St. 28 H. 8. c. 11. *Parson Leases and resigns.*

At the Common Law, If a Parson, Vicar, &c. had made a Lease and resigned, the next Incumbent might have entred immediately upon the Lessee.

But by a Statute made in the 28*th* year of *H.* 8. *the Lessee may hold on his Term for six years, if the Parson that made his Lease so long live, and the Term were made for so long time; but upon such Lease there must be so much Rent reserved within Forty shillings as such Benefice is valued at in the Kings Books.* See the Statute at large.

And by the same Statute, *If a Parson make a Lease and resign and dies, the Tenant shall hold out his Lease for the year that was commenced at the time of his death, if the Term were to have had so long continuance, if the Parson had not died.*

But this seems only of such Lands as are ploughed; for the succeeding Parson is to have the Parsonage House and Glebe, which is not sowed within a Month after he is Inducted, allowing a reasonable deduction for the Rent reserved upon such Lease.

But

But in both Caſes the Leſſee muſt pay the reſerved Rent to the ſucceeding Incumbent, who is enabled to ſue or diſtrain for the ſame.

And ſuch Leaſe muſt be in writing under Hand and Seal, and not by Parol.

But it ſhould ſeem, the Statute of 13 *Eliz.* before has made this Law of none effect. 13 Eliz. c. 20.

And having now done with theſe Statutes, as to Leaſes, let us next conſider what Bonds, Covenants, Promiſes, &c. are void within the Statute of 18 *Eliz.* before-mentioned. 18 Eliz. c. 11.

Covenants, Bonds, &c. made for the enjoying Houſes within Cities, Corporations, &c. are not void within this Law; for this Law makes no Bonds, Covenants, &c void, which are not againſt the intent of this Statute and the Statute of 13 *Eliz. cap.* 10. but Leaſes of Houſes and Lands in Cities, &c. by the Statute of 14 *Eliz. cap.* 11. are exempted out of 13 *Eliz. cap.* 10. and are not within the Statute of 18 *Eliz.* before. Hob. 269. *Covenants, Bonds; which good.*

A Parſon made a Bond to reſign upon requeſt, and afterwards a Leaſe to his Patron of part of the Glebe for Twenty one years: In an Action brought upon this Bond, the Incumbent pleaded the Statute of 18 *Eliz.* and averred, that this Bond was made to ſecure this Leaſe, and to compel the Incumbent to reſide, and adjudged a good good Plea, and an apt Averment. More 641.

Cro. El. 489. Noy 66. A Parson made a Lease, and in the Lease covenanted, Not to be absent by the space of 80 days in any one year, and gave Bond for the performance, and after became Non-resident for 80 days; and Resolved, that the Bonds and Covenants were both void.

Olivers Case, M. 4 Jac. B. R. A Parson made a Lease, and covenanted neither to do, or suffer to be done, any matter, whereby the Lease should become void, and after became Non-resident by the space of 80 days in a year, and this was held a good Covenant; and a Covenant, that the Parson should be Resident, was held not to be against this Law, by *Popham*, *Tanfield* and *Clench*, against *Williams*. *Ideo quære.*

Quære.

Leases of Colledges, Hospitals, &c. And having now done with Leases to be made by Ecclesiasticks of every kind, and having therein exceeded my bounds beyond Parsons and Vicars to all other Ecclesiasticks, since the Leases of Colledges and Hospitals come in my way, I will give the Reader what satisfaction I can concerning them: And as to them,

It is to be observed, That they are not comprehended in the Enabling Statute of 32 *H.* 8. nor in any other Statute that I find, till the Restrictive Statute of 13 *Eliz.* whereby (amongst the rest) the Masters and Fellows of Colledges, and the Masters and Guardians of Hospitals, are disabled to make any Grants or Conveyances of any of their Possessions, other than for Twenty one years, or three Lives, from the making of such

13 Eliz c. 10.

such Lease, and not from the day of the date, or from the date, as has been said: And this must be of Lands usually demised, and the accustomed Rent, or more, must be reserved with all the other Qualifications mentioned in the beginning of this Chapter.

But there is a Restriction upon Colledges by the Statute of 18 *Eliz.* that upon all Colledge Leases, a third part of the ancient Rent shall be reserved in Wheat and Mault, after the rate of 6 *s.* and 8 *d.* a Quarter Wheat, and 5 *s.* a Quarte Mault, to be delivered at the Colledges; and in default of the delivery to pay for the Wheat and Barley, after the rate the best Wheat and Mault shall be sold the next Market-day before the Rent should have been paid, and for default of such Reservation the Lease to be void; and the Markets that are to set the prices, are, *Oxford* for *Oxford*, *Cambridge* for *Cambridge*, *Windsor* for *Eaton*, *Winchester* for *Winchester*. Stat. 18 Eliz. cap. 6.

And by the Statute of 18 *Eliz.* they are *restrained to make any concurrent Leases till within three years of the end of the former Terms that are in being.* 18 Eliz. c. 11.

I shall now shew the Reader what things are demisable within these several Statutes, and what Reservations are good, and in what case the Acceptance of Rent by the Successor will make a Lease good, that was voidable within these Laws, and the several Qualifications mentioned in the beginning of this Chapter. *What Leases shall be good.*

Small's Case. M. 4 Jac. B.R. *Former in being.*

One *Small* being poſſeſſed of the Manor of *Padington*, by a Leaſe from a Biſhop for a Term of years, the Biſhop made a Leaſe to another for three Lives, and before Livery the Tenant ſurrendred his former Term; and it was held that the Surrender was made in due time, and the ſecond Leaſe good.

Cro. Jac. 458. 3 Bulſtr. 290. *More in the new Leaſes, than in the Old.*

A Prebend had uſually been leaſed (excepting the Crab-trees,) and that the Prebendary made a new Leaſe without excepting the Crab-trees, reſerving the ancient Rent, with other due circumſtances; and this Leaſe was held void againſt the Succeſſor, by reaſon of the adding of the Crab-trees.

Co. 5. 15. a. *Next Avoidance not demiſable.* Co. 10. 60. b.

It hath been adjudged, That a Biſhop, Dean, &c. cannot grant the next Avoidance of an Advowſon, nor any Rent-charge out of the Poſſeſſions of the Church; but the ſame is void within the reſtrictive Acts before-mentioned, though theſe cannot be ſaid any of the Poſſeſſions of their Churches.

Davenant verſ. Eveſq; Sarum, M. 23. Car. 2. B.R.

And it hath been held, That where a Biſhop demiſed a Rectory for Lives, and covenanted to diſcharge, ſave harmleſs, and indempnifie the Leſſee, &c. from all Penſions, Procurations, Subſidies, and from all other payments of any Sum of Mony, Demands and Duties whatſoever, ordinary or extraordinary, which ſhall be due and iſſuing out of the Premiſſes; that this Covenant would not bind the Succeſſor, unleſs it had been in the ancient Leaſes.

And

And the Lord Chief Justice *Hale* was of Opinion, That such Covenant, though it had been in former Leases, should not bind the Successor for the Royal Aid, or any new Charge by Act of Parliament.

But a Bishop may grant an ancient Office with the ancient Fee (if it be a necessary Office, for the life of the Officer:) But the Bishops cannot grant such Office to two, or in Reversion. Co. 10. 61. b.

And a Bishop cannot grant an Annuity, *pro consilio impenso & impendendo*, to bind his Successor, though it be confirmed by the Dean and Chapter.

And it hath been Resolved, That a Bishop of late erection may grant an Office of necessity to one in possession for life, with a reasonable Fee. Co. ib. b.

But these Grants must be all confirmed by the Dean and Chapter, because they are not good within the Statute of 32 *H.* 8.

But where Offices have anciently been granted in Reversion, they may still be granted in Reversion with Confirmation. Co. 10. 62. a. Cro. Car. 555.

If a Bishop grant an ancient Office with the ancient Fee and more, and the Grant be entire, (as where the ancient Fee was five Marks, and the new five Pounds,) 'tis void for all. But if it be several, (as five Marks, and Pasturage for two Horses,) it is good for the ancient Fee, and void for the other, Eveſq; Chich. verſ. Freedland. Leys Rep. 72.

per Hutton and *Yelverton verſus Crook* and *Harvey*.

Collyns and Jones's *Caſe*, Ley 80.

If a Copyhold Eſcheator be forfeited, the Biſhop may grant it in Fee by Copy of Court-Roll, notwithſtanding the Statute of 1 *Eliz.*

Co. 5. 15. a. *Charges void.*

It was alſo Reſolved, That where an Archdeacon made a Leaſe for three Lives, warranted by the Statutes before-mentioned, and the Leſſee granted a Rent-charge for an hundred years, which was confirmed by the Biſhop, Dean and Chapter; that notwithſtanding the ſame was void againſt the Succeſſor within the Statute of 13 *Eliz. cap.* 10.

Co 5. 14. b.

If a Writ of Annuity ſhould be brought againſt a Parſon, &c. pretending the ſame due by Preſcription; and although the Parſon pray in aid of the Patron and Ordinary, and upon a Plea pleaded by them, the Plaintiff obtains Verdict and Judgment, and all this by practice and fraud to charge the Glebe, it is void againſt the Succeſſor: For theſe Statutes being made for the benefit of the Church, advance of Religion and Hoſpitality, and to avoid Dilapidations, ſhall always have a favourable Conſtruction.

19 Aſſ. p. 9.

Acceptance of Rent, where it ſhall bind.

It is regularly true, that where the Wife, Iſſue in tail, or Succeſſor, accepts the Rent after the death of the Husband, Tenant in tail, or a Predeceſſor, upon a void Leaſe made by the Husband, Tenant in tail, or Predeceſſor, that ſuch Acceptance will not affirm the Leaſe.

But

But this Rule must be understood of such a Lease as is void *ipso facto*, without Entry or any other Ceremony; and therefore if a Parson, Vicar or Prebend, &c. make a Lease not warrantable by the Statutes for Twenty one years, rendring Rent, and dies; here no Acceptance of Rent by the Successor, &c. will affirm this Lease, because the same was void without Entry or other Ceremony. Hetley 88. Co. 3. 65. a. 35 H. 6. 3. & 4. 11 E. 3. Fitz. Abbot 9. 8 H. 5. 19.

But if a Parson, Vicar or Prebend make a Lease not warrantable within the before-mentioned Statutes for life or lives, reserving Rent, and dye, and the Successor before Entry accept the Rent; this Lease shall bind him for the time: For this being an Estate of Freehold, could not be void before Entry.

But if a Bishop, Abbot or Prior, which have the Inheritance in Fee-simple in them, make a Lease for lives or years not warranted by the Statutes before-mentioned, not being absolutely void by their deaths; but only voidable by the entry of the Successor, if the Successor accept the Rent before Entry, be it for lives or years, he affirms the Lease for his life. Dy. 239. p. 42. F. N. B. 50. c.

If a Bishop make a Lease not warranted by the Statutes, rendring Rent, and dye, and his Successor appoints his Bayliff to collect his Rents of that Mannor, who amongst the rest receives the Rent reserved upon this Demise, and accounts to the Bishops's Successor for it; this is a good Acceptance, and shall bind the Bishop for his time. 1 Rolls 476. d.

11 E.3.F.Abbot 9. Dy.239.p.42. 2 H.4.2.a.

So if a Parson leaſe for life not warranted nor confirmed, reſerving Rent, if his Succeſſor receive Fealty of his Tenant upon this Leaſe, he has thereby affirmed the Leaſe for his time: The like it will be, if the Succeſſor bring an Action of Waſte.

Cro.Jac.273.

But if a Biſhop make a Leaſe of Tythes or other things not manurable, for life or lives, rendring Rent, and dies, and his Succeſſor accepts this Rent, it will not affirm the Leaſe.

Quære.

But whether ſuch Acceptance upon a Leaſe for years of Tythes, &c. will bind the Succeſſor; I muſt leave it a *Quære*, not finding that Point any where reſolved.

I having now held the Reader long upon this Subject, I ſhall now leave them, and proceed to Examine, what Leaſes or Farms they may with ſafety take, or not take.

St.21 H.8.c.13. *Parſons, &c. muſt not take Farms.*

By a Statute made in the Twenty firſt year of King *Henry* the Eighth, it is amongſt other things enacted, 'That no 'Spiritual perſon ſhall in his own Name, 'or in the Name of any other, take to 'Farm any Mannors, Lands, Tenements, 'or Hereditaments, upon the penalty of 'Ten pounds for every Month that he holds 'the ſame; nor by himſelf, nor any other, 'ſhall buy Cattle, Corn, Lead, Tyn, Hydes, 'Leather, Tallow, Fiſh, Wool, Wood, or 'any manner of Victuals or Merchandizes, 'to ſell again for gain, upon pain to forfeit 'the treble value of things ſo bought.

'But

'But a Spiritual person may buy such 'things for his own use, and if they do not 'fit him, he may sell the same again: and 'so where he hath not sufficient Glebe, he 'may take Grounds for the maintenance of 'his Family. *Where he may.*

And it is further enacted by the same Statute, 'That no Spiritual person beneficed 'with Cure of Souls, shall Farm the Parso-'nage or Vicarage of another to take any 'Rent or Profit out of such Farm, upon the 'penalty of Forty shillings a Week, and ten 'times the value of the Rent, or profit he 'shall take out of his Farm. *Shall not farm another's Parsonage, &c.*

And it is further enacted by the same Statute, 'That no Spiritual person shall have 'or keep by himself, or any other, any Tan-'house or Brew-house, other than for his 'own Family, upon pain to forfeit Ten 'pounds *per mensem*. *Must not keep a Tan-house or Brew-house.*

'All which Penalties are given to the 'King and Informer, to be recovered in 'any of his Majesties Courts of Record at '*Westminster*, by Action of Debt, Bill, 'Plaint or Information, wherein no Essoin, 'Protection, or Wager of Law is to be ad-'mitted, &c. *Penalties, how to be recovered.*

M. 4 *Car.* 1 *Scaccario*, It was Adjudged, That a Spiritual person, not beneficed, was not within this Statute. Cragge versus Lampley, M. 4 Car.

By the Statute of 5 *Eliz.* there is 'Autho-'rity given to the Bishop of the Diocess, 'Parson, Vicar, or Curate of the Parish, to 'license any sick person to eat Flesh during 'his sickness; and if his sickness continue 'above Eight days after the granting of 5 *Eliz.* cap. 5. *Where he may license the eating of Flesh.*

'such Licenſe, then the ſame is to be Re-'giſtred in the Church-Book, &c. and that 'Licenſe to endure during the ſickneſs, and 'no longer.

Penalty, if needleſs.

'And if any Parſon, Vicar or Curate 'grant any Licence to any perſon or perſons, 'other than ſuch as evidently appears to 'have need thereof by reaſon of ſickneſs, 'the Parſon, Vicar or Curate that granted 'ſuch Licence, ſhall forfeit five Marks for 'every ſuch Licence, and the Licence to be 'void.

Sheep. Stat. 25 H. 8. cap. 13.

In the 25*th* year of *Henry* the Eighth there was a Statute made againſt the exceſſive number of Sheep; wherein there is a *Proviſo*, 'That it might be lawful to all 'Spiritual perſons, and every of them, to 'keep ſuch and ſo many Sheep upon their 'own Lands, and after ſuch form and man-'ner, and not otherwiſe, as they might 'have done before the making of the ſaid 'Act.

Incontinence.

There are ſeveral Acts of Parliament for puniſhing Incontinent Prieſts, which though ſince the bleſſed Reformation (I do not mean the laſt pretended Reformation; but that in the time of *Edward* the Sixth and Queen *Elizabeth*) are become obſolete and uſeleſs: Yet ſince I have promiſed them all the Statutes they may fall in the danger of, theſe are not to be omitted.

But before I come to thoſe particular Laws, I will beg the Reader's pardon for giving him a ſhort Hiſtorical account of the reſtriction of the Marriages of Prieſts, which gave the occaſion of theſe Laws.

Bellarmin

Bellarmin in his Diſputations endeavours to make the ſingle Life of Prieſts to be *Jure Divino*; but if not ſo, yet he goes about to prove that it has been enjoyned by Canons as high as the Apoſtles time: And to that purpoſe vouches the Canons of the Apoſtles (which though they may be ancient, yet no rational Man that peruſes them, will believe they were made by the Apoſtles, or very near their time) in which I muſt confeſs I find a Canon that by implication forbids Prieſts to marry, but not married Men to be Prieſts; and 'tis to this effect: *Ex his qui cœlibes in Clerum pervenerunt, jubemus, ut Lectores tantum & Cantores (ſi velint) nuptias contrahant.* De Clericis, cap. 18, 19. Canon 25.

But if he had look'd a little back in thoſe Canons, he would have found another manner of Prohibition in theſe words: *Epiſcopus aut Presbyter, aut Diaconus, uxorem ſuam prætextu Religionis non abjicito: ſi abjicit, ſegregator à Communione, ſi perſeverat, deponitur.* Canon 5. *Canons againſt the Marriage of Prieſts.*

But however it cannot be denied, but there were ancient Canons againſt the Marriage of Prieſts; but thoſe only forbid Prieſts to marry, but did not reſtrain married men from being Prieſts: And ſo it continued for many hundred years after Chriſts time, and for ſome time they might have married * with the Licence of the Biſhop; but never received or put in practice in *England*, though practiſed in *Italy*, *France*, *&c.* But the Prieſts here married, till *Anſelme* Archbiſhop of *Canterbury*, a *Burgundian*, a powerful and buſie Prelate, in a Synod

* Concil. Ancyran. Can. 10.

Hollingshead 30.b.10. Synod or National Council held at *Westminster*, made a severe Canon against it; but he meeting with an obstinate Clergy, that were unwilling to change their Wives for Concubines (to speak in the softest word) were not obedient: Whereupon (as my Author tells me) he called a second Council in the Ninth year of that King, where he made more severe Canons against

Ibid. 34.b.10. the married Clergy in the presence of the King and Nobility, to give them greater Authority; which he prosecuted with great Zeal, but did not live to effect what he desired.

I do not find that his Successor, *Rodolphus*, troubled himself much in this concern of the Eight years that he governed the Church of *Canterbury*; but his Successor, *William Corbet*, followed the steps of *Anselme*, who for this and his other good Works, was Canonized a Saint at *Rome:* And in the Year 1126. called a Council or Convocation at *Westminster* against the Married Priests, wherein one *John de Crema*, or *Cremensis*, the Pope's Legate, sent to manage this business, being a Learned Man, made an eloquent Oration in commendation of Chastity and a single Life, and inveighed violently against the Married Clergy; and as

Hoveden in H.1.274. Speed 461.a. &c. divers Authors of good Credit affirm, the Great Oratour was the same Night taken in Bed with a Woman, which made him to return with shame enough: howsoever, as Bishop *Godwyn* tells us, That in that Convocation the Canons were renewed against the Married Clergy; but the Archbishop finding

finding himself too weak to deal with so stubborn a Clergy, commended the care of this business to the King, who taking advantage of the Canons, squeezed some Mony out of the Married Clergy by way of Commutation.

Bp. Godwyn's Catal. of Bish. 83. Mat. Paris, LXX grees with Hoveden, and says. Quod ipse cum die illa Corpus Christi consecrasset post vesperam fuit in meretricio interceptus: Res ipsa notissima negari non potest, dum magnum decus in summum dedecus commutavit.

I find no more of this matter, till after the death both of this Archbishop and *Henry* the First: But I find there was a Convocation held at *London*, *Decemb.* 13. 1138. by the command of *Albert* Cardinal, Bishop of *Hostia*, where this matter was again violently prosecuted; and I find no more after of it, till in a Convocation or Council held under *Richard Wethershead* Archbishop of *Canterbury*, 1229. in which it is decreed, *Qui autem in Subdiaconatu vel supra ad matrimonium convolaverint, muliores renitentes & invitas relinquant.*

Goodwin 84. Fullers Eccl. Hist. 27. Lindw. Si qui Clerici.

But it should seem, notwithstanding all this Persecution, that for some years after some married Men held their Livings: For in a Synod or Council held by *Otho* the Pope's Legate at S. *Paul's* in *London*, in the Year 1237. there is a Canon to this effect: *Innotuit nobis, pluribus referentibus fide dignis, quod multi propriæ salutis immemores, Matrimoniis contractis, clandestine retinere cum uxoribus Ecclesias, & Ecclesiastica Beneficia adipisci de novo, & promoveri ad sacros Ordines contra statuta sacrorum Canonum, non formidant, &c.*

Cap. De uxoratis à beneficiis amovendis.

And

And then proceeds: *Quod ſi repertum fuerit aliquos taliter contraxiſſe, ab Eccleſiis & Eccleſiaſticis Beneficiis (quibus tam eos quam quoſlibet alios uxoratos fore decernimus ipſo jure privatos) removeantur omnino, &c.*

This Nail being thus at length driven to the Head, the Secular Clergy lay about Three hundred years under this Bondage, and though, if they would be at the coſt, they might have Diſpenſations to keep Concubines; yet for the Credit of his Holineſs, there was great care taken they ſhould not do it publickly, or ſcandalouſly. To which purpoſe there is a Canon in the ſame Council I laſt mentioned, to this effect: *Statuimus, & ſtatuendo præcipimus, & ubi Clerici, & maxime in ſacris Ordinibus conſtituti, qui in domibus ſuis & alienis detinent publice Concubinas, eas à ſe prorſus removeant infra menſem, & illas vel alias de cætero nullatenus detenturi, &c.*

Cap. De Concubinis Clericorum removendis. * Nota.

Canons againſt Concubins.

There was another Canon much like this, made in another Council held under *Stephen Langton* Archbiſhop of *Canterbury* at *Oxford*, not long before, in the Year 1222. to this effect: *Quod Clerici Beneficiati aut in ſacris Ordinibus conſtituti in Hoſpitiis ſuis publice tenere Concubinas non audeant, nec etiam alibi cum ſcandalo acceſſum publicum non habeant ad eas.*

Cap. Clericalis Ordinis. * Nota.

So that it appears clearly by theſe Canons, that Clerks were not in thoſe days poſitively and abſolutely forbidden to keep Concubins; but it muſt not be done, *publice nec cum ſcandalo*, nor muſt they have *publicum acceſſum*.

And

And it appears by the *centum gravamina* that were presented to the Pope about the Year 1521. by the *German Princes*, that it was one of the Grievances of that Nation, That the Pope permitted Clerks, Religious and Secular persons to live publickly with their Harlots, and get Children; and that in most places the Bishops and their Officials not only tolerated Concubinage upon paying Mony in the more dissolute sort of Monks; but also exacted it of the most Continent, saying, *It was then at their choice, whether they would have them or no.* *Dispensations for Concubinage* Hist. H. *by my Lord* Cherbury, p. 131. Art. 74. Art. 91.

So upon the whole matter, it seems, it was no Offence in a Clergy-man, that had a Dispensation to keep a Concubin privately in a nook without scandal, and go to her in the dark; but to keep a Wife of his own was a sin against the Holy Ghost, he must be deprived, he must be deposed. Calvins Inst. l. 4. c. 12. §. 23.

And therefore I cannot blame the *German* and *French* Laity, that they were so solicitous in the Council of *Trent* to have their Priests married, being loath (as should seem) to trust their Wives and Daughters at Confession with Priests that had not Wives of their own. Dyer 133. p. 1. 2 H. 4. 16. a. *Cap.* De uxoratis à beneficiis amovendis, ubi supra.

And it was no less a religious than prudent Expression of Pope *Pius* the second, *That though there were many weighty Reasons why Priests should be restrained from Marriage, yet the Reasons for restoring them their Wives were the more weighty.*

I would not have the Reader to think, that I ſpeak this to reproach the Church of *Rome* with this matter, as any of the allowed Doctrines of that Church; for I know there are many very ſevere Canons againſt the Incontinence of Prieſts; and not ſo only, but that forbids them to keep any Women in their Houſes, but Mothers, Siſters, and other near Relations, to avoid ſcandal and Temptations. But I write this, to ſhew the Corruption of the Court of *Rome*; for whilſt the Pope has power to diſpence with the Canons of the Church, Mony will make the beſt ineffectual there.

1 H. 7 cap. 4. *Statute, That the Biſhops ſhould impriſon Prieſts for Incontinence.*

Having given the Reader this Hiſtorical account concerning the reſtraint of the Marriage of Prieſts, and the ſucceſs of it, I will in the next place ſhew what Acts of Parliament have been made relating to this matter, and which are in force at this day.

In the firſt year of *H.* 7. there was an Act made, 'That it ſhould be lawful to all Archbiſhops and Biſhops, and other Ordinaries, 'having Epiſcopal Juriſdiction, to puniſh 'and chaſtize ſuch Prieſts and Clerks, and 'Religious Men, being within the bounds of 'their Juriſdiction, that ſhould be convicted 'before them, by Examination and other 'lawful Proofs requiſite by the Law of the 'Church, of *Avowtry*, *Fornication* and *Inceſt*, 'or any other Fleſhly Incontinency, by committing them to Ward and Priſon, there 'to abide for ſuch time as ſhall be thought 'to their diſcretions convenient for the qua-

'lity

'lity and quantity of their Trespass. And 'that none of the said Archbishops, &c. be 'thereof chargeable, of, to or upon any 'Action, or false or wrongful Imprisonments, 'but that they be utterly thereof discharged 'in any of the Cases aforesaid, by virtue of 'this Act.

It seems a Canon would not justifie an Imprisonment.

This Law, for ought I know, stands still in force: But there was a severe Law made in the 31*th* of *H.* 8. whereby it was made 'Felony for a Priest carnally to use a Wo- 'man, to whom he had been married or 'contracted; or if he kept company or fa- 'miliarity with her, or if any Priest kept a 'Concubin, as by paying for her Board, 'maintaining her with Mony, or other gifts 'or means, to the evil Example of others, he 'should forfeit all his Goods, Chattels and 'Spiritual promotions, and be put in Prison 'for the first Offence, and the second Offence 'to be Felony.

31 H. 8. c. 14. *Made Felony to use their own Wives.*

But this seeming too severe, was the next year Repealed; and it was enacted, 'That 'such Offender should for the first Offence 'lose all his Goods, Chattels and Debts, and 'lose the profits of all his Ecclesiastical pro- 'motions; but only for his life: For the se- 'cond Offence to forfeit his Goods, Chattels 'and Debts, and the profits of all his Lands, 'and of his Spiritual Benefices, Promotions 'and Dignities for his life: And for the third 'Offence should make the like forfeiture, 'and be Imprisoned during life.

32 H. 8. c. 14. *mitigated.*

By

31 H.8.c.14. *The six Articles make the marriage of Priests, Heresie.*

By an Act of Parliament made in the 31*th* of *H.*8. which is commonly called the Act of the six bloody Articles, by the third Article it was declared, *That Priests, after they have received Orders, might not marry, and to affirm the contrary thereof, was made Heresie and Treason by that Act.* But this bloody Act was repealed by 1 *E.6.cap.*12.

All Laws against marriage of Priests made null and void.

By the Statute of 2 *&* 3 *Ed.*6. *cap.*21. *All Laws, Statutes, Canons, Ordinances, and Constitutions made against the Marriage of Priests are made null and void.*

Children legitimate.

And by another Statute made 5 *&* 6 *E.6. cap.*12. it is adjudged and declared, *That the marriage of Priests is lawful, and legitimates their Children, and makes them capable to endow their Wives, and to be Tenants by the Curtesie.* But these Laws were repealed by the Statute of 1 *Mar.cap.*1.

1 Jac. cap.25. *See* 2 Inst.686.

However it came to pass, I know not, but for ought I can find, these Acts lay repealed all Queen *Elizabeth*'s time, till 1 *Jac.* then the latter Act was revived and made perpetual, and their Children made legitimate.

See 2 Inst.683.

So that upon the whole matter, all Acts of Parliament, Canons, Constitutions, &c. that restrain the marriage of Priests, or that illegitimate their Children, are made null and void; but the Canons and Acts of Parliament that punish their Incontinency stand in force.

Next let us see what Priviledge the Clergy have right to at this day.

CHAP.

CHAP. XI.

The Eleventh Chapter ſhews, what Priviledges belong to the Clergy at this day, by the Common and Statute Laws of this Realm, and likewiſe by the Laws Eccleſiaſtical.

THe Laws of this Realm have allowed, the Clergy in Holy Orders many great Priviledges:

The Priviledge of the Clergy.
2 Inſt. 3. 625. 4.

First, In their Perſons, they are not compellable to ſerve in any Temporal Office, as Sheriff, Conſtable, Overſeer of the Poor, &c. 'Neither can they be preſt to ſerve in the 'Wars; neither may they be arreſted in the 'Church or Church-yard, when they are 'attendant on Divine Service, upon pain of 'Impriſonment, and ranſom at the King's 'pleaſure, and likewiſe to make Agreement 'with the party.

May not be Officers temporal.
5 E. 3. c. 5.
1 R. 2. c. 15.
Muſt not be arreſted in Church or Church-yard.

And by a Statute made 1 *Mariæ*, it is enacted,

'That if any Perſon, &c. of their own 'Power and Authority at any time, &c. 'ſhall or do willingly or of purpoſe, by 'open and overt word, fact, act or deed, 'maliciouſly or contemptuouſly moleſt, let, 'diſturb, vex or trouble, or by any other 'unlawful way or means diſquiet or miſuſe

1 M. Seſſ. 2. c. 2.
Muſt not be diſturbed praying or preaching.

'any Preacher or Preachers, &c. licensed, 'allowed or authorized to preach by the 'Queen, or by any Archbishop or Bishop 'of this Realm, or by any other lawful 'Ordinary, or by either of the two Uni-'versities, &c. or otherwise lawfully autho-'rized or charged by reason of his or their 'Cure, Benefice or other Spiritual Promo-'tion or Charge, in any of his or their Ser-'mon or Collation in any Church, Chappel, 'or Church-yard, or in other place appointed 'to be preached in.

'Or if any Person, &c. shall maliciously, 'willingly or of purpose molest, let, disturb, 'vex, disquiet, or otherwise trouble any 'Parson, Vicar, Parish-Priest or Curate, &c. 'saying, doing, singing, ministring or cele-'brating Mass, or other Divine Service, Sacra-'ments, &c. that at any time then after shall 'be allowed, set forth or authorized by the 'Queens Majesty.

'That the Offender upon Conviction be-'fore two Justices of the Peace, shall by 'them be committed to the Gaol without 'bail or mainprize for three Months, and 'after to the next Quarter Sessions; where, 'if he repent and be reconciled, then to be 'discharged of his Imprisonment, finding 'Sureties for his good Behaviour; and if he 'fail therein, to be continued till the next 'Quarter Sessions.

This Act, though made in the time of Popery, is still in force, and may be executed upon such as disturb the present Ministers, Parsons, Vicars and Curates, &c.

And

And though it refer to such Church-Service as then after should be setled by the Queen, yet I conceive it extends to her Successors; and a Settlement by Act of Parliament, is a Settlement by the King in the most superlative manner.

And the late Act for Uniformity declares and enacts, *That all former Acts for Uniformity of Common-Prayer shall be of force, and extend to the Book of* Common-Prayer. 14 Car. 2. c. 4.

Must not be arrested.

The Bodies of Clergy-men cannot be arrested upon any *Capias* sued forth upon any Statute-Staple or Statute-Merchant; for the Processes are made out conditionally, *Si Laicus fuerit:* And if the Sheriff, or any other Officer, arrest a Clergy-man upon any such Conditional Process, I conceive an Action of False Imprisonment lies against him that does it, or he may have a special *Supersedeas* out of the *Chancery*, (that is, the *Cursitor's Office.*) 2 Inst. 4. Regist. 147.

Priviledge in their Goods.

And every Parson, Vicar, &c. is by the Common Laws of *England* free from the payment of Tolls in all Fairs and Markets, not only for all the Goods and Merchandizes gotten upon their Church-Livings; but also for all Goods and Merchandizes by them bought to be spent upon their Rectories and Church-Livings. Regist. 260. a. *Free from Tolls.*

Pontage, Murage.

And they are quit of Pontage, Murage, and other like Charges; and if they be distrained for any of these, they may have a Writ out of the *Chancery*, as aforesaid, made of course without petition or motion, under Vide Ezra c. 7. v. 24. ad idem.

the Great Seal of *England*, directed to the party that distrains or disturbs them for any of these things, commanding them to desist: And if such Writ be not obeyed, the Cursitor of course will make out an *Alias* and *Pluries*; and if none of those will be obeyed, an Attachment to arrest the party and detain him till he obey: And this Writ is called a Writ *De essendi quietum de Toloneo*, which you may see in the *Register*, or in the *Natura Brevium*.

Regist. 260.a. F.N.B. 227.f.

Not bound to appear at Leets and Sheriffs Turn. Regist. Orig. 175.a. F.N.B. 160.c.

They are not bound to appear or do Suit at the Sheriffs Turn, or any Leet or Law-day; and if they shall be distrained so to do, they may have a Writ of course in the *Chancery* directed to the Lord of the Leet, commanding him to forbear distraining them for any such cause, with like Process as in the last for his Contempt.

Stat. 13 E. 1. 2 Inst. 491, 492, 493.

And by the Statute of *Circumspecte Agatis*, it is enacted, *De violenta etiam manuum injectione in Clericum, & in causa defamationis placitum tenebitur in Curia Christianitatis, dummodo ad correctionem peccati agatur; & non petatur pecunia.*

Regist. Orig. 187.b. F.N.B. 175.b. *Not to be Bayliffs, Reaves, &c.*

And if a Clergy-man have Lands by the Tenure of which he is subject to be Bayliff, Reave or Beadle, and be chosen into any such Office by reason thereof, he has a Cursory Writ out of the *Chancery* to discharge himself.

So

So if the Sheriff or Collector of the Tenths or Fifteens will disturb them in the Lands belonging to their Churches, &c. they may have the like Writ for their discharge, and like Process for disobeying it, *ut supra*.

Regist. Orig. 188. a. F.N.B. 176. a. *Must not be disturbed by Collector of Tenths.*

But it hath been held, That Tythes may be extended upon an *Elegit* for the Debt of the Parson, *quod mirum:* But the *Elegit* being given by a Statute in which Tythes are not excepted, it will draw in Tythes.

Harwood verf. Palyn, 24 Car. 1. B. R. per B.

Anciently if a Clergy-man had been convicted of any Murder, Robbery, Burglary, &c. he was upon the demand of his Ordinary to be delivered over to him, where he was to make his Purgation according to the Rules of the Ecclesiastical Laws; and if he cleared himself, he was acquit * without any regard to his Conviction at Common Law; but if they adjudged him guilty, then he was to be degraded and kept in Prison: And this was confirmed to them by several Acts of Parliament.

2 Inst. 633, 634, 635. *The Priviledge of Clergy in criminal Casts.*

* Lindwood, cap. *Clerici pro suis criminibus detent.* gloss. verb. *pro convictus.*

But this Priviledge was never allowed to them in this Kingdom in Treason, Petit Treason or Sacriledge.

West. 1. cap. 2. Marlbr. c. 27. 25 E. 3. cap. 4, & 5. 4 H. 4. c. 3. 4 H. 7. cap. 13.

And a Delinquent might have had his Clergy *ad infinitum*, till the Statute of 4 *H.* 7.

And though this Priviledge of the Clergy be taken totally away in many cases by several Statutes, and in other cases Lay-men have it in common with the Clergy, if they can read as a Clergy-man; and though

the delivery of them over to the Ordinary be totally aboliſhed; yet the Clergy that are in holy Orders at this day, retain ſome of their ancient Priviledges, which the Laymen are not capable of.

Co.5.50. Bro.Coron.211. 2 Inſt.637. Hob.294.

For if a Clerk in Holy Orders be convicted (that is, found guilty by the Petit Jury) of a Crime for which the benefit of the Clergy is allowable, at this day he ſhall not upon the allowance thereof be burned in the Hand (as a Lay-man ſhall) upon the producing of his Orders; and if he have not them with him, the Court may, *ex gratia*, give him time to produce them till any other Aſſize or Seſſions.

St.4 H.7.13. 28 H.8.cap.1. 1 E.6.cap.12.

And a Clerk in Holy Orders, at this day, ſhall have his Clergy *ad infinitum*, from time to time, which no Lay-man can have above once.

Ssat.3 E.1. c.1. 14 E.3.c.1. 18 E.3 c.4. 1 R.2. c.3. *Purveyance.*

The Goods of Clergy-men were by ſeveral Statutes exempted and freed from the Kings purveyance; but his Majeſty having by Act of Parliament graciouſly releaſed this duty, the Laity hath the ſame priviledge.

2 Inſt.267. *Not amerced for the Church-Land.*

A Clergy-man ſhall not be amerced the higher in reſpect of his Church-Living or Benefice.

Regiſt.Orig. 289. F.N.B.29. *No Execution upon the Goods of the Churches.*

Nor ſhall any Execution be executed upon the Goods of his Church, nor any Diſtreſs taken in the ancient Fee thereof; but otherwiſe it is of Lands of late purchaſe: And if he fear any ſuch thing, he may have a Protection in Chancery *cum clauſula*, (*Quia nolumus.*)

If

If an Action of Trespass, Debt, Account or other Action, wherein Process of *Capias* lies, be brought against a Clerk in Holy Orders, and the Sheriff upon the Original return, that the Defendant is *Clericus Beneficiatus nullum habens Laicum feodum ubi summoneri potest*; in this case the Plaintiff cannot have a *Capias* to arrest his Body, but a Writ to the Bishop to compel him to appear. 2 Inst. 4. *No* Capias *against a Clerk.* 9 E. 3. 30. 24 E. 3. 44.

And by a Statute made in the fiftieth year of *Edward* the Third it is recited, 'That 'as well divers Priests bearing the sweet 'Body of our Lord Jesus Christ to Sick 'people, and their Clerks with them, as 'otherwise divers other persons of Holy 'Church, whilst they attend to Divine Services, in Churches, Church-yards, and 'other places dedicated to God, be sundry 'times taken and arrested by Authority 'Royal, and commandment of other Temporal Lords, in offence of God and Holy 'Church, and also in disturbance of such 'Divine Services: The King wills, and 'grants, and defends upon grievous forfeiture, that none do the same from hence-'forth; so as Collusion or feigned Cause be 'not found in any of the said persons of 'Holy Church in this behalf. 50 E. 3. c. 5.

In the first year of *R.* 2. there was another Statute made to the like effect, with this added, *That the party convicted should be imprisoned, ransomed, and made agree with the party so arrested.* 1 R. 2. cap. 15.

Co. 12. 110.

So that if any Parson, Vicar or Priest be arrested in going, staying or returning to do Divine Service according to his duty, he may have an Action upon this Statute, and recover Damages, and have the party Fined and Imprisoned that made the Arrest, and the Clerk that is assistant may have the benefit of these Laws.

Priviledge of the Clergy confirmed by several Parliaments.

And note, That all the Priviledges of the Church of *England* are confirmed by the Statute of *Magna Charta*: And so they were for the most part at the opening of every other Parliament after, till the beginning of the Reign of *Henry* the Fifth. How it came then to be discontinued by the negligence of the Clergy, or for what other cause, I know not.

And so having thus briefly mentioned many of the Priviledges of the Clergy, whereof the Common Law takes notice, and to which they have right at this day, by the Laws and Statutes of this Realm; next I will shew the Reader what Priviledges they pretend unto, at, and by the Canon and Civil Law, which Mr. *Lindwood* reckons up in Fourteen particulars:

Cap. Item statuimus verb. *Clericali Privilegio.* Concil. *Agatho.* ca. 23.

Primo, In hoc quod non conveniantur coram Judice seculari. Vide Concil. Agathi Canon 23.

But

But this Priviledge has not been allowed to them here in *England*; and this was Resolved in the *7th* year of *Henry* the Eighth, in the Case of one Dr. *Horsey*, Chancellor of the Bishop of *London*: Of which Case, for the rarity, I will give the Reader a brief account, and it was thus: Kelway 182, &c.

'One *John Hunn*, a Merchant of *London*, had prosecuted *Horsey* in a *Præmunire*; 'whereupon *Horsey* caused *Hunn* to be arrested for suspicion of Heresie, and committed him to *Lollards-Tower*, being the 'Bishop of *London*'s Prison; and in a 'Morning soon after the Prisoner *Hunn* 'was found dead and hanged in Prison: 'And it was given forth, That he had 'hanged himself in his Girdle; but notwithstanding it was believed, that *Horsey* 'and the Gaoler had murdered him.

'This coming to the Gaolers Ear, he took 'Sanctuary at *Westminster*; upon which, and 'other great Circumstances, *Horsey* and the 'Gaoler were by a Coroners Inquest in '*London*, upon view of the Body, found 'guilty of the Murther; and *Horsey*, as 'should seem, being in Orders, (I dare not 'say, Holy) stood upon this Priviledge, '*Not to be Tried before Temporal Judges.*

'And this being a Dispute between 'the Kings Prerogative and the Priviledge 'of the Church; the King, at request of 'the Temporal Lords and many of the Commons in Parliament, called before him at the '*Blackfryers* divers of his Spiritual Council,

'Divines

'Divines and Canoniſts; where the Clergy 'had one of their Counſel argued for their 'Priviledge, and Dr. *Standiſh* a Learned 'Divine argued for the King: But the great 'Offence taken was againſt the Abbot of '*Winchcomb*, who in his Sermon preached 'at *Paul's Croſs* in the time of the Parlia-'ment, had affirmed, That the Act made
4 H. 8. c. 2. '4 *H.* 8. (which took away Clergy from 'Laicks in many Capital Offences, but not 'from Clerks in Holy Orders) was againſt 'the Law of God, and Priviledge of the 'Clergy, and that the Makers of the ſaid 'Act had incurred the Cenſures of the 'Church.

'Soon after Dr. *Standiſh*, who had Argued 'for the King, was cited before the Con-'vocation, and there charged with matters 'of Hereſie, ariſing from matters which 'had paſſed in his Argument; whereupon 'he made his application to the King, who 'being ſatisfied of the juſtneſs of his Cauſe 'by Dr. *Veiſey*, Dean of his Chappel, aſ-'ſembled all his Judges and Counſel Spiri-'tual and Temporal, and divers of the 'Parliament Men: And after hearing of 'Divines, &c. the Judges declared, That 'thoſe of the *Convocation-Houſe* that were at 'the awarding of the Citation againſt Dr. '*Standiſh*, were in a *Præmunire*.

'And *Fineux*, Chief Juſtice, did declare in 'the Name of all the Judges, That the 'Convention of Clerks before Temporal 'Judges had been maintained by many 'good

'good and religious Kings of this Realm, and 'many good and Holy Fathers of the Church 'had been obedient to it, and content with 'the Law of the Land in this Point, &c.

'And Dr. *Veisey* gave the Reason, *Because 'the Canon in that Point was never received or 'allowed in* England.

'But the Clergy not being satisfied, the 'two Archbishops (who affirmed, that they 'were bound * by Oath to maintain the 'Priviledges of the Church) moved the 'King, that to avoid the † Censures of the 'Church, he would refer the matter to the 'Pope.

* Nota.

† Nota.

'But *Henry* the Eighth stoutly answered, 'That He by the Decree and Sufferance 'of God was King of *England*, and the 'Kings of *England* in time past had no Su-'periour but God only; and therefore know, 'that he would maintain the Right of his 'Crown and his Temporal Jurisdiction, as 'well in this Point as in all other.

'And after *Horsey* (that all this while had 'been protected in the Archbishops House 'at *Lambeth*, the Bishops having made his 'peace with the King) appeared privately 'in the *Kings-Bench*, and pleaded *Not guilty* 'to the Inquisition; and *Erneley* the King's 'Attorney confessed the Plea, whereby '*Horsey* was discharged (the more pity,) and 'the Bishops promised to dismiss *Standish*: 'And so this Point was setled against the 'Church, as 'twas very good reason.

I ſhall make no Comment upon the Caſe, though there are many things in it worth obſervation; and thoſe that are not ſatisfied with this ſhort account of this Caſe, may read it at large in *Kelway*'s Reports, with all the Circumſtances, and the Reader will not think his time ill ſpent, but with me praiſe God, that the King and Nation are freed of the Popiſh Bondage and Clergy.

2. The ſecond Priviledge mentioned by *Lindwood*, is, *Quod verberans Clericum incidit in Canonem.*

This Priviledge is confirmed to the Clergy by the Statute of *Circumſpecte Agatis*, that the Spiritual Court ſhould have Juriſdiction, 2 Inſt. 292. *de violenta manuum injectione in Clericum*; but the end of ſuch Suit in the Spiritual Court is only, *pro ſalute animæ*, by Excommunication or Penance.

And if a Clerk ſhould ſue in the Spiritual Court in point of damage, he runs himſelf in danger of a *Præmunire*; for the Eccleſiaſtical Judge may proceed only *ex officio* to correct the ſin.

But if the Clerk will in this recover damages, he muſt bring his Action at Common Law.

And note, That ſuch Suit in the Spiritual Court can only be ſued by one in Holy Orders.

3. The

3. The third Priviledge *Lindwood* mentions, is, *Quod non vocantur ad onera secularia.*

This Priviledge the Common Law allows; but it must be intended of such Charges as were at Common Law, but not of new Charges by Statute Law; in which the Clergy are not exempted, as hath been said before in the beginning of this Chapter.

And yet note, That the Clergy, till the late Rebellion, granted all their Subsidies in their Convocations; but in the late Acts of Parliament are taxed promiscuously.

4. The fourth Priviledge *Lindwood* mentions, is, *Quod possunt facere Collegium ubi hoc Laicis non licet.*

It is true, that before the Reformation the Clergy have erected Colledges, Abbies, Priories, and other Spiritual and Religious Corporations by the License of the Pope, or the Bishop; but generally confirmed by the Kings. Vide Dyer 267. a. b. & 81. a. 9 H. 6. 16. b. Co. 4. 107. b.

But without License of the Bishop of the Dioceſs, it was forbid to erect any such by several Canons; and by such License, I take it, a Lay-person as well as a Clergyman, might have erected a Colledge, &c. But here in *England*, the Clergy never had greater Priviledge than the Laity in this matter; for no such Corporation could ever be erected here but by the Royal Authority. Conc. Agatha Can. 18. Conc. Aurelian Can. 18. q. 2. Grat. 9 H. 6. 16. b. Dyer 81. p. 64. & 267. p. 12. Co. 4. 107. b.

5. The

5. The fifth Priviledge reckoned by *Lindwood*, is, *Quod poſſunt vendicare rem conceſſam Eccleſiæ ante deliberationem.*

This Priviledge is of no uſe here in *England*, becauſe the Spirital Courts have not power to determine the right or property of Land or Goods.

2 Inſt. 492.

6. The ſixth Priviledge is, *Quod eodem Privilegio gaudent perſona & familia.*

This Priviledge holds no further here in *England*, than in ſuch particulars as are mentioned in the former part of this Chapter.

7. The ſeventh Priviledge by *Lindwood* mentioned, is, *Quod facientes Statuta contra Clericos ſunt ipſo facto Excommunicati.*

He that would attempt to put this Priviledge in execution, would endanger to run himſelf in a great *Præmunire*; and many Statutes have been made againſt the Clergy in the height of Popery, as the Reader may find in many parts of this Book.

8. The eighth Priviledge is, *Quod ſoli Clerici poſſunt beneficium Eccleſiaſticum obtinere.*

This is allowed without diſpute.

9. The ninth is, *Quod per literas impetratas contra Laicum, cum clauſula generali non poteſt Clericum conveniri.*

I muſt leave this to the Civilians to determine; for I muſt ingenuouſly acknowledge, I do not underſtand the meaning of this nor the next; which is,

10. *Quod in Civili nomina ſportularum non tenentur dare niſi quatuor ſiliquas.*

Hæc tamen de jure Canonum non debentur, ſays the Author; and then proceeds,

11. *Quod*

11. *Quod de Acquiſitis licet ſint in poteſtate Patris poſſunt teſtari.*

This and the next Priviledges are in the Spiritual Law and Courts, and not oppoſed by the Common Law.

12. *Quod ſine conſenſu Patris agere poſſunt pro rebus ſuis recuperandis.*

13. The thirteenth I muſt leave it as I find it; and it is, *Quod non pignorari.*

14. The laſt is, *Quod ſi ſciente Domino ſervus efficiatur Clericus liberatur à Domini poteſtate.*

I do not find any ſuch Priviledge allowed in *England*, but it may be reaſonable enough; theſe four laſt are only known to the Civilians, to whom I leave them.

And ſo much for the Priviledge of the Clergy by the Canon and Civil Laws: But I conceive they receive more benefit by thoſe the Common Law allows to them.

CHAP.

CHAP. XII.

The Twelfth Chapter ſhews, how the Law ſtands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how to be Repaired, and concerning Seats, Burials, Tombs, Coats of Arms, and other Enſigns of Honour in memory of the Dead, and of Church Ornaments, and at whoſe Charge to be provided, and what remedy againſt thoſe that ſhall commit any Treſpaſs in the Church, Church-yard, or in breaking up Tombs, taking, carrying away, or imbezeling any of the Goods or Ornaments of the Church, &c.

THE word CHURCH is taken from the Saxon word Cinc, or Cinic, which Name is ſtill retained in the North parts of *England*, and in *Scotland*, by changing the C into K, as was uſual with the Engliſh Saxons; in Latin *Eccleſia*, or *Baſilica* from the Greeks; and it hath in the Holy Scriptures ſeveral acceptations; for ſometimes it is taken for one Family of the Faithful People of God, as 1 *Cor.* 16. 19. *Rom.* 16. 4, 5. Sometimes for the Chriſtian People

Church unde dicitur.

The ſeveral acceptations.

People of one Country or Province, *Rom.* 6. 23. Sometimes a *Council* or *Synod* is taken for the Church, *Mat.* 18. 17. and sometimes, *pro universa fidelium per totum terrarum orbem diffusorum multitudine*: And sometimes for the *Material Church*, as 1 *Cor.* 11. 18. and 14. 34. *The Material Church*, quid.

And that is the Church of which I am now to discourse, *That is, a Building made of Stone, Brick, Timber, and other Materials, for the meeting of Christians to hear the Word of God read and preached, and to joyn in Prayer and other Religious Duties; built by the License of that Bishop in whose Dioces the same is erected, and by him consecrated to that Service, an Office peculiarly belonging to the Office and Dignity of the Bishop.* Distinctio 1. Nemo Ecclesiam.

The Ancient manner of Founding Churches, was, After the Founders had made their applications to the Bishop of the Dioces, and had his License, the Bishop, or his Commissioners, set up a Cross, and set forth the * Church-yard where the Church was to be built, and then the Founders might proceed in the Building of the Church; and when the Church was finished, the Bishop was to consecrate it; but not till it was endowed, and before the Sacraments were not to be administred in it. *The manner of founding of Churches.* Causa 16. q. 1. quicunque q 3. Lat. Concil. Chalcedon 1. can. 4.

* Ut Major Ecclesiæ per circuitum 40 passus habeat. Capella vero vel minoris Ecclesiæ, 30. c. 17. q. 4. de consecratione distinct. 1. nemo Ecclesiam.

See Sir Tho. Ridley's *View of the Civil and Ecclesiastical Laws*, 191. *more of this matter.*

3 Inst.201.* *Who may build a Church.*

But by the Common Law and Custom of *England*, any good Christian may build a Church without the License of the Bishop, which was confirmed by the Pope at the request of King *John*, with this qualification, so that it were with the Bishops consent, and not prejudicial to any ancient Churches: But however the Law takes no notice of them as Churches, nor have they any priviledge, till they be consecrated by the Bishop.

3 Inst.203.

Where a Church shall be re-consecrated. Conc. Niciæ pars 3. dist.1. Eccleſiis ſemel. Ibid.Si motum.

And in some cases, though a Church have been consecrated, it must be re-consecrated, as in case any Homicide, Adultery, or Fornication shall be committed in it, or the Church burned: but the re-building of the Walls, if the Altar (that is, the Communion Table) were not removed, requires no new Consecration, nor Churches consecrated by Hereticks, *In fide Sanctæ* Trinitatis *in forma Eccleſiæ*, are not again to be consecrated.

Ibid.

Division.

The Church consists of Three principal parts, that is, the Belfrey, or Steeple, the Body of the Church with the Isles, and publick Chappels, and the Chancel.

In whom the Freehold is. 11 H.4.12.a. 21 H.7.21. b.* Cro.Jac.667. 8 H.6.9. 8 H.7.12. 38 H.6.19. 15 H.7.8.

The Freehold of the whole Church, and Church-yard, are in the Parson or Rector, and therefore the Parson may have an Action of Trespass against any Body that shall do any trespassable act in the Church, or Church-yard; as in breaking

36 H.6.19. 15 H.7.8. Noy 104.

Seats

Seats annexed to the Church, in breaking the Windows, cutting the Trees, or taking away the Leads, or any of the Materials of the Church, or for breaking Windows, the party may be indicted and fined, and bound to his good-Behaviour.

Who is to repair Churches. 2 Inst. 653. Coke 5. 67. b. Stath. tit. Accompt.

The Body of the Church, the Belfrey, and all publick and common Chappels, within or adjoyning to the Church, are by the Laws and Custom of *England*, to be re-edified, maintained and repaired, at the charge of the Parishioners and Land-holders within the Parish; and herein the Common Law and Custom of *England* is kinder to the Clergy, than in other Countries where the whole charge lies upon the Rector.

How Churches were anciently repaired. C. 10. q. 3. Quia vero & placuit ut nullus. Conc. Braga. cap. 2. Cathedraicum, *how it came due.*

Anciently the Bishops had a third part of the Tythes and Offerings, in some places a Moiety, and in some places a Fourth part, and in consideration thereof were bound to the Repair of the whole Church; but upon a Release of this Interest to the Rectors, they were acquitted of the Repairs of the Churches, and had only two shillings for the Honour of the Bishops Chair, in lieu thereof, called *Cathedraicum*, which duty (as I take it) was never paid in *England*; and the Reason might be, because the Bishops here were never charged with the repair of the Churches, and had therefore no share in the Offerings; *tamen inde quære.*

Who is to raiſe Mony for the repair of the Church.

The Churchwardens are to raiſe the Mony for the repair of the Church, and are to make the Repais; and for the raiſing Monies to that purpoſe, they are to make their Levies in this manner:

The manner to make a Levy for the Church.

Co.5.67.b.

The Sunday before the Churchwardens deſign to make a Levy, they are to give publick Notice in the Pariſh Church, immediately after Common Prayer, of the time and place deſigned for making the intended Levy; and then at the place and time appointed, the Churchwardens and the Pariſhioners, there met, are to conſider what Sum of Mony will be neceſſary to be raiſed for ſuch Repairs as ſhall be then needful; and after they, or the Major part of the Pariſhioners, there met, have agreed what Sum is fit to be raiſed, then they, or the Major part there preſent are to proceed, and make an equal Levy upon all the Pariſhioners and Land-holders within the Pariſh; and if any of the Pariſhioners refuſe to pay their Rates, being demanded by the Churchwardens, they are to be ſued for, and to be recovered in the Eccleſiaſtical Court, and not elſewhere.

How it is to be recovered.

Stat. Circumſpecte Agatis, 13 E.1. Reg.Orig.44 b. Briton.l. 1.c.4.

Prohibition lies where the Bounds of the Pariſh are controverted.

2 Rolls 291. l.1.5.4.

But in caſe the Bounds of the Pariſh come in diſpute in the Eccleſiaſtical Court, that is, if the Party Aſſeſſed aver that the Land for which he is aſſeſſed lies in another Pariſh, and not in the Pariſh where it is aſſeſſed, if the party be contentious he may have a Prohibition, and try it at Common Law.

And

And if the Pariſhioners, when they come together at ſuch meeting, refuſe or neglect to joyn in making ſuch Aſſeſſment, or refuſe to meet, I conceive the Churchwardens, having juſt cauſe for ſuch Aſſeſſment, may proceed alone.

What to be done, if the Pariſhioners will not make a Levy.

Cap. *Archidiac.* verb. *Subpœna.*

For if the Churchwardens ſhall neglect to make the Repairs when duly admoniſhed by thoſe that have the power to viſit, within a certain time the Ordinary or other Viſitors ſhall limit, they may proceed againſt the Churchwardens by Eccleſiaſtical Cenſures, to compel them to do it: And the Law never compels any body to do a thing, they have not means to effect.

And it ſhould ſeem in this caſe, that the Pariſhioners are likewiſe puniſhable by the Eccleſiaſtical Judge, for their neglect in this kind.

But ſome are of Opinion, That the Churchwardens cannot proceed alone, but muſt compel the Pariſhioners to do it by Eccleſiaſtical Cenſures: *Ideo quære.*

Hetley 61.

And it ſhould ſeem, that by cuſtom Lands in a foreign Pariſh may be charged to the repair of the Church.

2 Rolls 308. v. 20.

And if any perſon find himſelf aggrieved at the inequality of any ſuch Aſſeſſment, his Appeal is to the Eccleſiaſtical Judge, who is to ſee Right done.

How to be relieved againſt unequal Aſſeſſments.

2 Roll. 289. 1 H. 6. 5. 67. a.

Landlords not taxable for their Rents.

Every one that holds any Lands within the Pariſh, is in Judgment of Law a Pariſhioner, chargeable to this Tax; but the Landlord, in reſpect of the Rent he receives, is not chargeable to the repair of the Church; nor in that reſpect can be ſaid a Pariſhioner.

Theſe Taxes are upon the perſon in reſpect of the Land.

And theſe Levies are not chargable upon the Land; but upon the perſon in reſpect of the Land, for the more equality and indifferency.

Who is chargable to the Ornaments.

But there has been ſome queſtion made, where one that holds Lands in one Pariſh and reſides in another, may be charged to the Ornaments of the Pariſh Church where he doth not reſide: And ſome Opinions have been, that Foreigners were only chargable to the Shell of the Church; but not to Bells, Seats, or Ornaments.

Rolls 291. k. 1. 2 Brownl. 10.

Landlords chargable.

But I conceive the Law to be clear otherwiſe, and that the Foreigner that holds Lands in the Pariſh, is as much obliged to pay towards the Bells, Seats and Ornaments, as to the repair of the Church; otherwiſe there would be great confuſion in making ſeveral Levies, the one for the repair of the Church, the other for the Ornaments, which I have never obſerved to be practiſed within my knowledge.

Land-holders are, and the Reaſons.

Secondly, It is poſſible that all, or the greateſt part of the Land in a Pariſh may be held by Foreigners, and it were unreaſonable in ſuch caſe to lay the whole charge upon the Inha-

Inhabitants, which may be but a poor Shepherd.

Thirdly, The Reason alledged against this charge upon the Foreigners, is chiefly because the Foreigner has no benefit by the Bells, Seats and Ornaments.

Which receives an Answer in *Jeofferies* Case; for there it is Resolved, That Land-holders, that live in a Foreign Parish, are in Judgment of Law Inhabitants and Parishioners, as well in the Parish where they hold Lands, as where they reside; and may come to the Parish-meetings, and have Votes there as well as others. Co. 5. 67. b.

For Authorities in the Case, it is clear by the Canon, That all Land-holders *in ipsis degentes, vel alibi, ad quævis onera Parochianos ipsos ipsam Ecclesiam & Ornamenta ejusdem concernentia, & eis in his de jure vel consuetudine incumbentia, consideratis possessionum & redituum hujusmodi quantitatibus, cum cæteris parochianis Ecclesiarum prædictarum, quoties opus fuerit, contribuere teneantur.* Lindw. *Cap.* Licet parochiani.

And I have seen a Report under the Hand of Mr. *Latch*, that it was Resolved in *Willymot's* Case, *H.* 6 *Jac. B. R.* and in *Chester's* Case, 10 *Jac.* That a Foreigner that held Lands in another Parish wherein he did not reside, was as much chargable to the ancient Ornaments of the Church, as Bells, Seats, &c. as those that lived in the Parish; but that such Land-holders could not be charged to new Bells, Organs, &c. *Authorities.*

1 Bulstr. 20. And Mr. *Bulstrode* reports a Case about the same time, That the Chief Justice *Fleming*, and Mr. Justice *Williams* were of the same Opinion, and gave this Reason, That the Foreigner might come to Church if he pleased.

Quære. And having said thus much to this matter, I must leave it a *Quære* amongst these diversities of Opinions.

2 Rolls 291. k. 4. Addit. Poph. 197. It hath been resolved, that the Major part of the Parishioners may make a Levy for new Bells or Organs.

If some should be omitted in a Levy. 2 Rolls 291. k. 3. contra. Ibid. 290. H. 10. But if in the making a Levy for the repair of the Church, some of the Parishioners or Land-holders are omitted, if the Churchwardens shall sue upon such a Levy, a Prohibition lies in the case; *tamen quære.*

Though generally all the Parishioners and Land-holders within a Parish ought to be taxed towards the Repairs of the Church, as has been said; yet that Rule admits some Exceptions.

Who may be freed from these Levies. Cap. Licet parochiani. *The Rector and Vicar.* For, *First*, the Rectory or Vicarage which is derived out of it are not chargable to the repair of the Body of the Church, Steeple, publick Chappels or Ornaments, being at the whole charge of repairing the Chancel.

The Founder. H. 3 Car. 1. B. R. per Henden. *Secondly*, The Founder of the Church may prescribe, That in respect of the Foundation, he and his Tenants have been freed from the charge of repairing the Church.

Thirdly,

Thirdly, It hath been Resolved, that the Inhabitants of a Chappelry may prescribe That in consideration that they have time out of mind paid Three shillings four pence, to the Repair of the Mother Church, or at their own charge repaired a certain part of the Mother Church, they have been freed from all other charges about the Repair thereof. *Those of a Chappelry* Hob. 67. 2 Rolls 290. l. 1, & 2.

But a Prescription by the Inhabitants of a Chappelry, That because they have time out of mind repaired some part of the Fence of the Church-yard, they have been freed from the Repair of the Mother-Church, has been disallowed. Noy 41. contra 2 Rolls 290. l. 1. Ibid. 311. a. 1. Marsh. 91. Hob. 67.

And yet there hath been some Resolutions, that the Inhabitants of a Chappelry may prescribe, That in consideration they have repaired their own Chappel time out of mind at their own charge, that they have been freed from the charge of Repairing the Mother-Church; but there being Opinions to the contrary, I must leave it as a *Quære:* But the better Opinion seems against such Prescription. 2 Rolls 290. H. 7, & 8. cont. Bulst. 1. 16, 17. accord. *and so it was Resolved* P. 42 El. B. R. *between the Chappelry of* Coxwell *and Church of* Faringdon *in* Berkshire. Quære.

If a Petit Chapman take a Standing weekly in the Market to sell his Wares, he shall not for this be charged to the Repair of the Church. 2 Rolls 289. H. 5. Andrews versus Hutton. H. 4 Car. 1.

A Prescription, That the Arable Lands within a Parish had time out of mind been only charged to the Repair of the Church, has been disallowed; for the Houses are as well chargable as the Land. Hetley 133.

If

Hob. 67. *Churches united, how to be repaired.*

If two Churches be united, the Repairs of the ſeveral Churches ſhall be made as before the Union.

And ſo much concerning the Repair of Pariſh Churches and publick Chappels annex'd to them; and as for the Repair of other Chappels, I ſhall defer till I come to ſpeak of Chappels.

I did purpoſely omit, in the former Edition of this Book, to ſpeak of the Repair of Chancels, leſt I ſhould have raiſed a Queſtion I could not determine; but the Point has lately come in queſtion Judicially, and I ſhall tell the Reader now what I have learned on this Subject.

Regularly, the Repair of the Chancel, both by the Canon Law and Cuſtom of *England*, is to be made by the Rector or Parſon of the Pariſh, which he is compellable to do by Eccleſiaſtical Cenſure, Suſpenſion and Sequeſtration.

But the great Queſtion in this caſe is, where there is an Impropiator, how to compel him to do it, the Rectories and Tythes in that caſe being become Lay-fee: But this Point coming lately in queſtion in the *Common-Pleas*, between *Walwin* and *Awbry*, it was agreed to both by the Counſel that argued on both ſides, and the whole Court:

P. 29 Car. 2. rot. 372, C. B.

Firſt, That the Impropriators are chargable with the repairs of the Chancels.

Secondly, That they may in the Eccleſiaſtical Courts be compelled by Eccleſiſtical Cenſures to repair them.

But

But the great Queſtion was, Whether the Biſhop might ſequeſter the Tythes, they being now become Lay-fee? Which Point, by reaſon of ſome miſcarriage in the Pleadings, did not receive a determination.

Many Preſidents were ſhewed in point, That impropriate Tythe had been ſequeſtred by the Eccleſiaſtical Judge in this caſe, both before and ſince the War; and the better Opinion ſeemed to be for the Sequeſtration, it being agreed that the Eccleſiaſtical Court has Juriſdiction of the cauſe, and that being one of the ordinary Proceſſes of Court.

Seats in Churches.

The next thing to be ſpoken of is the Seats in Churches, built for the eaſe of the Pariſhioners to ſit, kneel, and ſtand in, for the hearing the Word of God read and preached, and joyning in Prayers, and other Religious Duties, with the other Pariſhioners.

By whom to be repaired.

Theſe are to be built and repaired as the Church is to be, at the general charge of the Pariſhioners, unleſs any particular perſon be chargable to do the ſame by Preſcription.

In what manner to be built.

The Seats ought to be regular, and of a moderate height, that the Behaviour of the Pariſhioners may the better be obſerved; and if any Body of their own Heads ſhall preſume to build any Seat in the Church without the Licenſe of the Ordinary, or conſent of the Miniſter and Churchwardens, or in any inconvenient,

Who may build Seats.

place

place, or too high, it may be pulled down by Order from the Bishop, or his Archdeacon, or by the * Churchwardens, by the consent of the Parson; for the Freehold of the Church, and all things annex'd to it, are in the Parson: And therefore if any one presume to cut or pull down any Seat annexed to the Church, he may have an Action of Trespass against the Misdoer (though he formerly set it up) if he do it without his consent or order from the Ordinary; but if the Seat be set loose, he that built it may remove it at his pleasure, as I conceive.

*Dantries Case T. 2 Jac. C. B. 11 H. 4. 12. a. Cro. Jac. 667. 21 H. 7. 21. b.

Seats cut or pull'd down, who shall have the Materials.

8 H. 7. 12.

What the Parson may do in the Church.

But though the Freehold of the Church be in the Parson, yet he cannot pull down any of the Seats anciently erected, or of late erected; but by License from the Bishop, or by the consent of the Churchwardens.

Noy 108.

If any Seats annex'd to the Church be pulled down, the property of the Materials is in the Parson, and he may may make use of them if they were placed in the Church by any one of his own head, without legal Authority; but for the Seats erected by the Parishioners, by good Authority, I take it, the property of the Materials upon removal is in the Parishioners.

Who may dispose of the Seats.

2 Rolls 288. g. 1, 2.

The Churchwardens, with the Approbation of the Parson, may by Custom dispose of the Common Seats, built at the charge of the Parish, and place the Parishioners

oners therein, according to their degrees and qualities; but no ſuch Cuſtom can exclude the Biſhop from a Temporary diſpoſition of ſuch Seats: But the Biſhop cannot grant Seats to a man and his Heirs, becauſe they muſt be attendant to the Houſes. 3 Poph. 140. Hob. 69. Gratrax & alii verſus Beardeſley, H. 30 & 31 Car. 2. B. R. 2 Rolls 288.

But the Biſhop has no power to diſpoſe of the Seats in any private Chappel next to the Church, that is not maintained and repaired at the Pariſh charge. 8. 5. Parſons Law 113. Hob. 69.

The Seats in the Chancel are properly in the diſpoſe of the Rector or Parſon; but it ſhould ſeem that a Pariſhioner may preſcribe for a Seat there. Holt verſ. Ellys. Noy 133.

And note, That all that has been ſaid before of Seats, muſt be intended of ſuch Seats as no particular Pariſhioner has a right to by preſcription; for whereſoever any Pariſhioner is Owner of an ancient Meſſuage, to which any Seat has been uſed by preſcription time out of mind; there the Ordinary, Parſon or Churchwardens have nothing to do in the diſpoſing of ſuch Seat.

About Preſcriptions for Seats in Churches, the Law has been controverted; for ſometimes it has been held, That the Owner of an ancient Meſſuage might preſcribe to have a Seat in the Iſle of a Church, which himſelf repaired: After it went further for a Seat in the Body of the Church, which was repaired by him that preſcribed to have it. Cro. Jac. 667. Co. 12. 106. 3 Inſt. 202. Noy 129.

But

But the Law is now ſetled in this Caſe, that a man that is Owner of an ancient Meſſuage might preſcribe for a Seat in any part of the Pariſh Church, within which Pariſh ſuch Meſſuage ſtands, although he have not uſed to repair it.

Buxton verſus Bateman, T. 4 Car. 2. B. R. rot. 463.

And this was Reſolved in an Action of the Caſe brought by *Buxton*, againſt one *Bateman*, for diſturbing him in a Quire, in the Body of *Yolgreave* Church in *Derbyſhire*, which *Buxton* claimed by preſcription to his Houſe, by all the Judges of the *Kings-Bench*, and after affirmed in a Writ of Errar in the *Exchequer Chamber*, ſo that this Point is now ſetled by all the Judges of *England*.

Vide Syderfin 88, 89, 209. malement Report.

Preſcription for Burying. Carleton verſus Hutton, Noy 78.

And as a man may preſcribe for a whole Seat in a Church, Iſle or Quire; ſo he may preſcribe for the firſt, ſecond, or other ſitting or place in a Seat.

And in all theſe caſes of Preſcriptions, the Ordinary has nothing to do; but the matter is ſolely determinable at Common Law.

Co. Ent. 8. b.

And as a man may preſcribe to have a Quire, Iſle, or Seat in a Church; ſo he may preſcribe to an ancient Meſſuage, to have the ſole Burial of the Dead, in ſuch Iſle, Quire, or place in the Church.

Who may be buried in the Church. Spelm. Conc. 590. n. 9. 451. n. 29. 545.

Anciently none were admitted to be Buried in the Church but Prieſts, and thoſe that were of clear life and converſation.

There

There was likewise anciently a payment due for those that were buried, called *Symbolum animæ*, or *pecunia Sepulchralis*; and this was paid though the Body was buried in another Parish. Ibid. 517. *Payment for Burials.*

But by the Canon Law, *Interdictum est omnibus Christianis terram mortuis vendere & debitam sepulturam denegare.* But this must be intended in the Church-yard; for by another Canon in the same Council it is expresly decreed, *Quod nullus Laicus in Ecclesia sepeliatur nisi in Cœmiterio.* *Nothing to be paid for Burials.* Conc. Triburiensis. Can. 16. Can. 17.

And by the same Council it is decreed, That *ubi decimas persolvebat vivus, sepeliatur mortuus.* *Where one shall be buried.* Can. 15.

Anciently there were no Church-yards in Cities, nor burying of the dead; so that the Archbishop of *Canterbury* could not be buried in his own Cathedral, till *Cuthbert* Archbishop of *Canterbury* obtained License from the King, that the Archbishops might be buried in the Cathedral at *Canterbury.* *No Church-yards in Cities.* Spelm Conc. 290.

The Church-yards are of common right to be fenced by the Parishioners. 2 Inst. 489. Co. 6. 67.

By the Custom of *England*, every person (except such as are afterwards excepted) may at this day be buried in the Church-yard of the Parish where he dies, without paying any thing for breaking the Soil. *Who may be buried in the Church yard.* 13. q. 2. quæsta & tribus, & sepeliendum.

And

Who in the Church.

And by the Custom of *England*, every Parishioner (except as hereafter is excepted) may be buried in any common part of the Church or Chancel, paying the accustomed Fee to the Parson for breaking the Soil, which for most part is Three shillings and four pence in the Church, and six shillings and eight pence in the Chancel; and this is only for breaking of the Floor, and that's the reason that in some places the Churchwardens have the Fee for breaking up the Church, though of common right it belongs to the Parson; and in this the custom must be observed.

Spelm. Concil. 564. leges Canuti, cap. 20.

Who may set up Tombs.

Sir *Edward Coke* is of Opinion, That any person may erect a Tomb or Monument for the dead in the Church, Chancel, publick Chappels, or Church-yards, in a convenient place; (but I conceive it must be intended by License of the Bishop, or consent of the Parson and Churchwardens:) And that if any body break it, the party that set it there may have an Action against those that break or pull it up, or deface it: And after the death of those that set it, the Heir shall have the Action.

3 Inst. 202.

What remedy if broken.

More 878. 3 Inst. 202.

Who may not be buried in the Church, or Church-yard.

Some persons are denied Christian Burial, and therefore such persons are excepted in what is said before, and may not be buried in the Church or Churchyard, without special License from the Bishop.

13. q. 2. placuit & ibid. fatendum, & ibid. quibus.

That

That is, such persons as Murder themselves, dye Excommunicated; those that dye in any mortal Sin, Sacrilegious persons and Usurers; but of Usurers the Canon holds not in *England*.

Grave-stones, &c. More 878. 9 E. 4. 14. a. Co. 12. 113. 3 Inst. 110, & 202.

For Grave-stones, Winding-sheets, Coats of Arms, Penons, or other Ensigns of Honour, hanged up, laid or placed in memory of the Dead, the property remains in the Executors, and they may have Actions against such as break, deface, or carry them away, or an Appeal of Felony.

Whose the Bells, &c. are. 12 H. 7. 27. b. 37 H. 6. 32. 8 H. 5. 4. 10 H. 4. 9.

Who may have an Action for taking them.

The property of the Bells, Books, and other Ornaments of the Church, is in the Parishioners, and in the custody of the Churchwardens, who may maintain an Action of Trespass against such as shall wrongfully take them away, and the Successors may sue this Action for the taking away in the time of their Predecessors, and the damages recovered shall be to the use of the Parishioners; but they may declare * *ad dampnum ipsorum*, or *dampnum parochianorum*, and either way good, and the Release of one Churchwarden † shall not bar his Companion; or they may have an Appeal of Robbery, for stealing the Goods of the Church.

* Cro. El. 179. 8 E. 4. 6. b.

† Cro. Jac. 23.

Property changed by Offerings. 34 H. 6. 10. Co. 10. 91. a.

By the Laws of *England*, in the time of Popery, if a Stranger had taken my Goods, and offered them to an Image in a consecrated Church; this had made as good a change of the property of my Goods, as though I had sold them in a

Market overt; but if I found the Goods after in the Wrong-doers poſſeſſion, I might take them again.

Goods may be given to the Church. 11 H.4.12. Cro.Car.343.

A man at this day may give or dedicate Goods to Gods Service in ſuch a Church, and deliver them into the cuſtody of the Churchwardens, and thereby the property is immediately changed, and the Churchwardens may have an Action for the taking them away.

Reverence to the Church and Churchyard.

There has always been great Reverence given to Churches and Church-yards, and other places conſecrated to Gods Service; and anciently Churches and Church-yards were Sanctuaries for Traitors, Murderers, Robbers, Thieves, and others Malefactors; and many Laws were made for the regulation of them, and reſtraining that priviledge, till at laſt Sanctuaries, with great reaſon, were totally taken away; for they were not uſed like the Cities of Refuge under the Law, for thoſe that unawares killed others, but for all People, be the Crime never ſo horrid.

Numb.35. v.11.

Where Sanctuaries were taken away. Stat.26 H.8. cap.13. St.27H.8.c.12.

In the 26*th* of *H.* 8. Sanctuaries were taken away in High Treaſon, in the 27*th* of *H.* 8. they were taken away in wilful Murder, Rape, Burglary, Robbery in the High-way, or in any Houſe, or in any * Church or Chappel, and in wilful burning any Houſe or Barn with Corn.

* Fruſtra implorat Eccleſiæ auxilium qui in ipſam deliquit, c.17.q.4. Ad Epiſcopos.

But

But by a Statute made in the 21*th* year of King *James* they were finally taken away and abolished, they having too long continued for the protection of the greatest Malefactors, a thing unfit for hallowed places. St. 21 Jac. c. 28 *Sanctuaries finally taken away.*

But that Churches and Church-yards should not be prophanely used, is evident from the example of our Saviour, who cast out those that bought and sold in the Temple, and overthrew the Tables of the Mony-changers, and the Seats of them that sold Doves; telling them, *My House shall be called of all Nations the House of Prayer, but you have made it a Den of Thieves.* Mark 11. v. 15.

And in the Council of *Mentz* it is forbid, *Ut in Ecclesiis aut in domibus Ecclesiarum vel* **atriis placita secularia minime fiant.* *Courts not to be kept in Churches or Church-yards,* Can. 40. **Church-yards.*

And by a Canon made in the sixth General Synod at *Constantinople*, buying and selling is forbidden in Churches and Church-yards, wherewith a Canon of our own, made in the time of King *James*, agrees. *Fairs and Markets not to be in Churches or Church-yards.* Can. 76. Can. 89. Stat. Winton.

And by a Statute made in the 13*th* year of *Edward* the First it is enacted, *That Fairs or Markets should not be kept in Churches or Church-yards, for the Honour of the Church.*

There is a Canon to this effect, *Quod nullus secularium, nec in Ecclesia, nec infra atrium ipsius Ecclesiæ, qualecunque scandalum, aut simultates excitare præsumat, nec arma trahere, aut quemcunque ad vulnerandum, aut interficiendum appetere, quod si fecerit à communione privetur.* Conc. Cabilonensis, Can. 17. *No fighting, &c. in Churches and Church-yards.*

5 Ed. 6. cap. 4. And to the same effect there was a Statute made in the fifth year of *Edward* the Sixth, 'That if any Parson, &c. should by 'Words openly quarrel, chide or brawl, 'in any Church or Church-yard; that then 'it should be lawful for the Ordinary of the 'place, the matter of Fact being proved by 'two Witnesses, to suspend a Lay-person, '*ab ingressu Ecclesiæ*, and a Clerk from the 'exercise of his Office as long as he shall 'think fit, according to the quality of the 'Offence.

'And that if any person shall smite or 'lay violent Hands upon any other in the 'Church or Church-yard, then *ipso facto*, 'every such person shall be deemed excom-'municate.

No striking or drawing Weapons in the Church or Church-yard.

'And if any person, &c. maliciously 'strike another in any Church or Church-'yard, with any Weapon, or shall draw 'any Weapon in any Church or Church-'yard, to the intent to strike any other 'therewith; the party thereof convicted 'by Verdict, or two lawful Witnesses, be-'fore the Justices of Assize, Oyer and Ter-'miner, or Justices of the Peace in their 'Sessions, shall have one of his Ears cut 'off; and if he have no Ears, then to be 'marked in the Cheek with an hot Iron, 'with the Letter F, and *ipso facto* excom-'municate.

It

It may be a Question, What the meaning of these words, *Ipso facto* Excommunicate in this Act shall be understood, Whether it shall be without Sentence declaratory, or no? Which is made a *Quære* in *Dyer*; but by the Canonists, there must be a Sentence declaratory.

Ipso facto. Dyer 275. p. 48.

Lindwood, *Cap.* Quia incontinentiæ, *verb.* Ipso facto.

And the Law so abhors violence and force to be used in Churches and Church-yards, that it will not admit a man to strike again in his own defence in a Church or Church-yard; and therefore the Plea of *De son assault demesne*, is not allowed for a good Plea in that Case.

De son assault demesne, *no Plea in a Church, &c.* Cro. Jac. 367.

And to make an Arrest in a Church or Church-yard, immediately after Divine Service, when it may be done elsewhere, is Indictable and Finable.

Arrest in Churches, &c. punishable. Cro Car. 602.

And yet it hath been held, That there may be a Way through a Church or Church-yard.

Ways through Churches, &c. 18 E. 4. 8. a.

By the Statute of 1 *E.* 6. the benefit of the Clergy is taken away from such as steal any Goods out of any Church or Chappel.

2 E. 6. cap. 4. *Clergy taken away in Sacriledge.*

For the punishment of such as disturb the Minister in the Church, whilst he is reading Divine Service, or arresting the Minister whilst he is attending Divine Service, see in the 111*th* Chapter before, and *Stat.* 50 *E.* 3. *cap* 5. and 1 *R.* 2. *cap.* 15.

And so much for the Priviledges of Churches and Church-yards.

Officers of the Church. Kitchin 194.

The last thing I have to speak relating to Churches, is the Officers belonging to the same, which in time of Popery were many; as *Ostiarii*, *Lectores*, *Exorcistæ*, *Acolythi*, *Psalmistæ*, *Cantores*, *&c.*

De Clericis, lib. 1. cap. 13.

He that minds to know the several Duties of all these Officers, or Orders, may satisfie himself in *Bellarmin*'s Disputations, or in *Gratian*, with the manner of their Ordinations.

Distinct. 23. cap. Quorundam Clericorum & dist. 25. per-lectus.

Ostiarius *may be taken for a Clerk or Sexton.*

Amongst these the Churchwardens and Parish Clerk or Sexton, who perform several of these Offices, are not reckoned, and those are now the only Officers of the Church of *England*, and of whom I am now to speak.

Churchwardens Office. Doct. & Stud. 118.

The Office of the Churchwardens is to take care of the Repair of the Church, and has the ordering of the Bells and Seats, and is to provide all Books and Ornaments belonging to the Church, and in his custody, and in their charge are all the Goods of the Church, and they are to provide Bread and Wine for the Communion, and to see there be a decent Communion-Table, with a Table-cloth and Carpet, and Flagon, Plate, and Bowl of Silver, Gold, or Pewter, for the Service of the Church, when the Communion is Administred; they are to make Levies, and raise Mony for the doing of all this in such manner as is before directed; and at the end of their Office they are to give an accompt of their Receipts, and disbursments to the Parishioners, and what

8 H. 5. 4.

remains

remains in their hands upon ſuch accompt, with all the Goods of the Church in their cuſtodies, they are to deliver over to their Succeſſors. 8 E. 4. 6.

There are many things more belong to their Office, but ſo well known, I need not mention them.

By whom to be choſen. Can. 89.

Theſe Officers by a Canon made in the time of King *James* the Firſt, are to be choſen by the Miniſter and Pariſhioners; but if they cannot agree of the perſons, then the Parſon, Vicar, or Curate, is to chuſe one, and the Pariſhioners the other; but where the cuſtom has been to chuſe them all by the Pariſhioners, without the Miniſter, the cuſtom muſt be obſerved, notwithſtanding the Canon. 26 H. 8. 6. 2 Rolls 287. f. 50.

Side-men their Office. Can. Jac. 90.

There were other Officers called Side-men, but they are almoſt laid aſide; their Office is to aſſiſt the Churchwardens in doing their Duties, and they were to take care that no body ſhould loiter or talk in the Church-yard or Church-porch, and to ſee that the Pariſhioners frequented the Church, &c.

The Clerks Office. Can. Jac. 91.

The Clerk or Sexton is to be choſen by the Parſon or Vicar, or in their abſence by the Miniſter, who the Sunday after ſuch Election, is by him that makes the Election to be declared, who is Elected.

How to be elected.

——The party ſo elected ought at leaſt to be Twenty years of Age, of honeſt Life and Converſation, and one that can write,

read, and ſing: His Office is to aſſiſt the Miniſter at Prayers, and to attend him, and to keep the Church and Seats clean, and has the keeping of the Keys of the Church to that purpoſe, and is to ring to Prayer, and to do many other things, which by cuſtom belong to his Office to do.

Ero. Car. 589. 2 Rolls 286. f. 42.

Parſons Law 116.

But if ſuch Pariſh-Clerk have time out of mind been choſen by the Pariſhioners. he muſt be ſo ſtill, notwithſtanding the Canon.

And ſo much for Churches, I ſhall next proceed to the Chappels.

Chappel, unde dicitur. Cowel, Minſhey, Spelman, hoc verbo.

Chappels, in Latin *Capellæ*; about which denomination I find great diverſity of Opinions amongſt the Learned: Some conceiving it takes its name *à capiendo Laicos*; Others are of Opinion they took that name *à capra*, becauſe anciently they were covered with Goat-skins.

Others think they take their name *à cappa Sancti Martini*; becauſe anciently the Kings of *France*, when they went to Wars, carried that Cap along with them, which was kept under a Tent, and thence called *Capella*.

Others have thought it is taken for a Cheſt or Repoſitory, wherein the Relicks of Saints were preſerved:

Ella, *in the end of a word ſignifying* little, *and* Cap. *of* capio, *to receive.*

Amongſt this variety of Opinions, I ſhall beg the Readers pardon to put in my own amongſt the reſt, being not well ſatisfied with any of theſe:

A Chappel, is a Church in ſmaller Character, and therefore I imagine it might be called *Capella* from the Littleneſs of its content or capacity to receive perſons, it differing nothing from a Church, but in the dimenſion or content, and that the Church is the Elder Siſter.

So a Chappel is of little receipt in reſpect of the Mother Church.

Of Chappels there are three ſorts; Free Chappels, Chappels of Eaſe, and Private Chappels.

Diviſion of Chappels.

What thoſe Chappels were that were called Free Chappels, I find likewiſe ſome difference of Opinions; for ſome have been of Opinion, That they were Chappels founded in Pariſh Churches, and endowed by the Founder, and made free to all People to come, and therefore called Free Chappels.

Minſhey, Cowel *in free Chappels.*

Others were of Opinion, That they were Chappels built by the Kings of this Realm, or by their Licenſe, and exempted from the Viſitation of the Ordinary.

Others take them for Donatives, and therefore called Free Chappels, becauſe they were freely given.

Theſe Free Chappels, whatſoever they were, were all given to the King in the firſt year of *Edward* the Sixth, except ſome few that are excepted in the Acts of Parliament by which they were given; or ſuch as are founded by the King, or his Licence, ſince the Diſſolution: For it is agreed on all hands, That the King may erect a Free Chappel, and free it from the Juriſdiction of the Ordinary, or may Licenſe a Subject ſo to do.

St. 1 E. 6. c. 14.

Chap-

Chappels of Eaſe, Parochial and not Parochial, the difference. 2 Inſt. 362.

Chappels of Eaſe; ſome of them have Parochial Rights to Chriſten and Bury, and are therefore called Parocial Chappels, by way of diſtinction from others that have no ſuch priviledge; and theſe differ in nothing from Churches, but in the want of Rectories and Indowments, the Mother being to be ſerved before the Daughter.

Thoſe Chappels of Eaſe which are not Parochial, cannot Bury or Chriſten; but are only uſed for the eaſe of the Pariſhioners, to hear the Word of God read and preacht, and to joyn in Prayers.

Chappels how to be repaired, &c.

Chappels have like Officers for the moſt part as Churches have, diſtinguiſhed only in name; and theſe Chappels muſt be conſecrated by the Biſhop as Churches are; and the Repairs muſt be made by Aſſeſſments on the Inhabitants and Land-holders within the Chappelry in the ſame manner as for the Repair of Churches, and are viſitable by the Ordinary, and the like Appeals to the Ordinary for unequal Aſſeſſments; but all this muſt be intended of ancient Chappels, and where this courſe hath been uſed: For if there be Land given for the Repair of them, or any Land or Eſtate charged by preſcription to the Repairs of them, then the cuſtom muſt be obſerved.

But of new Chappels of Eaſe there may be ſome queſtion, Whether the Ordinary can compel the Inhabitants to repair the ſame.

But

But when a number of People have for their Ease joyned together, and erected a Chappel, and procured the Bishop to consecrate it (which was the Original manner of erecting Churches) it should seem in reason, that the Bishop should have the same power to compel the Repair, as he has to Visit it. 44 E. 3. 18. 3.

But I conceive there is no doubt, but those of the Chappelry, or the major part of them, may agree to make an Assessment for the Repair of such Chappel, and agree that the Collector for default of payment should distrain for it; and I conceive such By-Law for a publick good, made by the greater number, shall bind the rest. Co. 5. 63, 64. a. Co. 8. 127. *It is a Maxim at the Civil Law*, Refertur ad universos quod publice fit per majorem partem.

The Cure of Chappels of Ease in many places, is to be performed by those that have the Cure of Souls in the Parish; and in some places they are indowed with Lands or Tythes, and in some places by voluntary contributions. * And Land or Tythes may be appendant to a Chappel. *Who has the Cure of Chappels.* * Rast. Entr. *Trespass in* dismes 4. *and in* Præmunire *in* Rome 4. 1 Rolls 110. a. Co. 5. 72. b.

Whosoever by Law or Custom is bound to provide Chaplains for any such Chappel, may be compelled to do it in the Ecclesiastical Courts, or an Action upon the Case lies against him at Common Law, to recover Damages for not performing; but this must not be intended of a publick Chappel. 22 H. 6. 46. b. Rast. Entr. 2. b.

The Offerings made at any Chappel are to be rendred to the Mother Church; but this must not be intended where by custom, time out of mind, the Chaplain has had them, for there the Canon will not bind; nor *Offerings at Chappels.* Othobon. cap. Gratia quæ.

nor does the Canon extend to Chappels of late erection, unless they be with a *Salvo jure matris Ecclesiæ tunc concessæ.*

How a Chappel may become a Church.
47 E. 3. 4. b. 5. a.
2 Inst. 364.

If the Patron of a Chappel Presentative present to it by the name of a Church, and the Clerk by that presentment be instituted and inducted, it hath lost the name of a Chappel, and gained the name of a Church: *Quære*, what other alteration is made thereby.

Chappels annex'd to Churches how to be repaired.
2 Inst. 489.

Publick Chappels annex'd to Parish Churches, are (as hath been said) to be repaired by the Parishioners as the Church is; but not if any other person be bound by custom to repair them.

Quare Imp. *will lye of a Chappel.*
2 Inst. 363.
F.N.B. 33. E.

And note, That a *Quare Impedit* will lye of a Chappel.

In what Cases the Inhabitants of a Chappelry shall be freed from the repair of the Mother Church: See before in this Chapter.

Private Chappels.

Private Chappels are such as Noble-men, and other Religious and Worthy persons have at their own private charge built in or near their own Houses, for them and their Families to perform Religious duties in; these Private Chappels and their Ornaments, are maintained at those Noble and Worthy persons charge to whom they belong; and Chaplains provided for them by themselves, with Honourable Pensions; and these anciently were all consecrated by the Bishop of the Diocess, and ought still to be so; but I doubt many have been neglected of late time.

The

The last thing I have to speak of, relating to Churches, is the Church-yard, in Latin *Cæmiterium*, from the Greek, *Quasi dormitorium, quia mortui dicuntur dormire usque ad resurrectionem.* *Church-yards, &c.*

It is the ground wherein the Church is erected; the Freehold thereof is in the Parson; so that the Trees, Grass, &c. growing in it are his; but he may not cut down the Trees but in especial Cases, as hath been shewed elsewhere. 2 Inst. 489. Doct. & Stud: 118. *Cap.* Quamvis lex naturæ.

The Fences are to be repaired at the charge of the Parishioners, or in such manner as by custom has been used: And the Visitors in their Visitations are to inspect the Repairs, and to compel the Reparations, if need require. 2 Inst. 489.

It is consecrated Ground, and participates of all the Priviledges belonging to the Church, before-mentioned, and the Parishioners may here freely bury their Dead without contradiction, or paying any thing for breaking the Soil.

It is not to be put to any prophane use, to have Swine kept in it, or Muck-heaps laid in it; but kept decently as a place dedicated to Gods Service.

CHAP.

CHAP. XIII.

The Thirteenth Chapter treats of Parſonages, Vicarages, Sine Cura's *and Donatives, and of the Indowments of Vicarages, and how a Parſonage and Vicarage may be re-united; and many other things relating to Parſonages, Vicarages, and* Sine Cura's.

A Parſonage or Rectory, quid.

A Parſonage or Rectory, is a certain portion of Land, Tythes and Offerings, eſtabliſhed by the Laws of this Kingdom, for the maintenance of the Miniſter that hath the cure of Souls within the Pariſh where he is Rector, or Patron, and properly comprehends, *Integra Eccleſia parochialis, cum omnibus ſuis juribus, prædiis, decimis, aliiſque proventuum ſpeciebus: Alias vulgo dictum beneficium.* And ſometimes it is taken *pro Manſione, ſeu domicilio Rectoris.*

Spelmans *Gloſſ. verbo* Rector 12.

15 H.7.8.a.
21 H.7.21.b.
Edgar verſus Sorrel, M. 5 Car. B.R.

And though properly a Rectory or Parſonage doth conſiſt of Glebe-Land and Tythes with the Offerings; yet it may be a Rectory, though it have no Glebe but the Church and Church-yard; and in ſome places, as in *London*, and other great Towns and Cities, there may neither be Glebe nor Tythes; but Annual Payments and Offer-

Ibid.

ings

ings in lieu thereof, and by the grant of a Rectory all the Glebe, Tythes and Offerings will pass.

A Vicarage, is a Cantel or Portion of the Rectory set out by the Patron, Parson, and Ordinary, for the maintenance of a perpetual Vicar, who as Vicegerent of the Parson, hath the cure of the Souls within the Parish where he is Vicar: But a Vicarage may consist of Land or Tythes alone, or of Glebe, Tythe, and Offerings, or in an Annual Pension without Glebe or Tythes; and such Pensions have been limited by several Canons, first to five Marks, after it was extended to six Marks, and lastly to eight. Cap. Quoniam autem verbo 5. q. marcarum.

But generally Vicarages are indowed with Glebe and Tythes.

Of Indowments, some are beyond all time of memory, that is, so long ago, that it is not known in what time or age the same was made, and in such case it shall be presumed, that the Vicar was indowed with such share of the Rectory, Tythes, and Offerings, as the Vicar and his Predecessors have enjoyed by all the time of the memory of any man. *Indowments before and within memory.*

But if the Indowment it self be extant, then the Vicar must be content with such part of the Rectory as he is thereby indowed with.

But

How to be expounded.

But if these Indowments be ancient they shall be expounded according to the usage since.

2 Rolls 335. 7. And therefore if a Vicar were anciently in the time of *Henry* the Third, or before, indowed *de decimis garbarum*, arising in such a Village, Hamlet or Place, and have by colour of this Indowment, as long as any body can remember, had the Tythe-Hay as well as Tythe-Corn of the same Villages, Hamlets and Places, it shall be presumed that in those days Hay past by that name.

Ibid. 335. 8. Reynells versus Green, M. 10 Jac. B. R. So if a Vicar were anciently indowed *De minutis decimis*, and have by colour of this Indowment, by all the time of memory, had the Tythe of some small parcel of Wood; although Tythe of Wood in its own nature be accompted a great Tythe, yet the Vicar shall enjoy the Tythe of this Wood by reason of the usage.

Hetley 70. 135. If a Vicarage were anciently indowed *de Alteragio*, which properly signifies the Offerings at the Altar; yet if the Vicar, by colour of this Indowment, by all the time of memory have enjoyed the small Tythes, he shall have them still.

2 Rolls 234. 7. 335. 4. Owen 74. If a Vicar be indowed of all the Tythes arising in the Parish (except Corn,) and certain Fields or Grounds in the Parish, have time out of mind been sown with Corn, till of late they have been planted with Hops, or sown with Saffron, Woad, Rape, &c. the Vicar shall have the Tythe, and not the Parson.

And

And if the Vicar be indowed of all the white Tythes, or small Tythes arising, renewing, &c. within the Parish, he shall not by this Indowment have the small Tythes arising upon the Glebe Lands of the Rectory, though they should afterwards be severed from the Rectory. 2 Rolls 335. 2 & 3 Cro. Eliz. 578. More 457. Hetley 135. Winch. 70.

Vicars shall not pay Tythes of the Glebe.

And it hath been Resolved, That upon a general indowment of a Vicarage, the Vicar shall not pay the Tythes of his Glebe-Land to the Parson. Cromptons Case. P. 7 Car. 1. B. R.

Matter upon Indowments.

If the Vicar be indowed of all the small Tythes, and after Lands that have been sown with Corn, or mowed for Hay, time out of mind, whereof the Parson hath had the Tythe, and these Lands are since converted to Hop-yards, or sown with Saffron, Woad, Rape, &c. the Vicar shall have the Tythes, and not the Parson: For the Indowment goes not to the Lands, but the Tythes. 2 Rolls 335. 5.

A Vicar enjoyed a Tythe time out of mind, which was not in his Indowment; and Adjudged good, and shall be intended an Augmentation made by the Parson. Hardres 328, 329.

If a Vicar be indowed of all the Tythes arising upon a Mannor, he shall by such Indowment have not only the Tythes of the Demesn and Tenements; but also of the Freeholders Lands within the Mannor. 2 Rolls 235. 6.

The Parſonage of *Luffenham* in *Leiceſterſhire*, the 22*th* of *Edward* the Fourth, was appropriated to the Abby of *Sully*, upon condition that a Vicarage ſhould be indowed: A Vicar from time to time ever ſince was preſented and paid Firſt-fruits, but no indowment now extant, it ſhall now be intended that it was indowed.

The Indowments of Vicarages have been always favoured at Law, the Vicars for the moſt part having the cure of Souls,

Upon what occaſion Vicarages were indowed.

Indowments of Vicarages were for the moſt part made upon the appropriating of Churches to Religious Houſes, &c. and upon the Appropriation they did uſually aſſign ſome ſmall Portion of the Rectory to maintain a perpetual Vicar to ſerve the Cure, and took the reſt of the Rectory to the uſe of Abbies, &c.

But in proceſs of time the Abbots, &c. grew better Husbands, and took the whole Rectories to themſelves, without indowing of any Vicar, and ſerved the Cures by their own Monks and Fryers; by which means Hoſpitality was neglected, the Churches and Rectory Houſes dilapidated, the Miniſter often wanting; whereupon the Statute of 15 *R.* 2. and 4 *H.* 4. were made, for the making void ſuch Appropriations as were made without competent indowment of Vicarages, and likewiſe againſt the appropriating of Vicarages; but Vicarages indowed before thoſe Statutes, might notwithſtanding thoſe Statutes have been appropriated.

15 R. 2. cap. 6.
4 H. 4. cap. 12.

Bretton verſus Ward. M. 17 Jac. B. R.

But

But though for the most part Vicarages were indowed upon Appropriations; yet sometimes the Parsons, Patrons and Ordinaries did indow Vicarages without any appropriation of the Parsonage: And if the Vicar were charged upon such indowment with the Cure, as for the most part they were, then the Parsonage became a *Sine Cura*; of which more hereafter.

Sine Cura's how introduced.

The Parson or Appropriator, is Patron of the Vicarage by common Right; yet nevertheless a Lay-man might have been Patron of a Vicarage as well as the Parson, and so might the King; and the Advowson of a Vicarage may be appendant to a Manor by Prescription, and it shall be intended it was granted by the Parson before the time of memory.

How an Impropriation may be restored.
17 E. 3. 51 b.
11 H. 6. 18. b.
39 E. 3. 33. a.
19 E. 2. *Quare Impedit* 178.
2 Rolls 336.
E. 5.
14 E. 3. 8, 16.

It should seem that at the Common Law, before the Statute of 14 *E.* 3. the Freehold of the Vicarage remained in the Parson, and that the *Præcipe* was to be brought against the Parson; and before that Statute the Vicar could not have had a *Juris utrum*, and he shall still have aid of the Patron, Parson and Ordinary.

Freehold of the Vicarage, in whom.
6 E. 3. 50. a.
3 E. 3. 17. b.
9 E. 3. 8. b.

And as the Vicarage was part, and taken out of the Parsonage; so it may be again re-united.

For if the Profits of the Parsonage or Vicarage fall into such decay, that either of them by it self is not sufficient to maintain a Parson and Vicar, they ought again to be re-united.

How a Vicarage may be re-united.
31 H. 6. 14. a.
40 E. 3. 28. b.

2 Rolls 337. h. 1.

And the Parſon and Ordinary, in the time of the Vacation of the Vicarage, may re-unite the Vicarage to the Parſonage.

Where a Vicarage may be enlarged, and how. Ibid. h. 2.

22 E. 4. 24. b. *per Catisby.*

And if a Vicarage ſo fall into decay, that the ſame is not ſufficient, competently to maintain a Vicar, the Biſhop may judicially compel the Parſon to enlarge the Vicarage or Appropriator; but by *Catisby*, 22 *E.* 4. 24. *b.* ſuch Augmentation muſt be made by the Biſhop, Patron and Ordinary.

How a Vicarage may be diſſolved. Parry verſus Bancks, 12 Jac. Scac. Palmer 219.

It hath been Reſolved, That where there is a Parſonage and Vicarage indowed, that the Biſhop in the Vacation may diſſolve the Vicarage: But if the Parſonage be impropriated, the Biſhop cannot diſſolve the Vicarage; for upon a diſſolution the Cure muſt revert, which it cannot into Lay-hands: For where there is a Parſonage and Vicarage, they both have the Cure; the Parſon *habitualiter*, the Vicar *actualiter*; *peo Noy.*

How the Rectory and Vicarage may be re-united. 44 Aſſ. p. 37. 2 H. 6. 33. 11 H. 6. 18. b.

If an Impropriator or Appropriator, Patron of a Vicarage by agreement between him and the Ordinary, preſents to the Parſonage, by this they are Re-united; and it ſhould ſeem that a bare Preſentation, without any Agreement at all, diſappropriates the Parſonage, and re-unites the Vicarage.

If

If any Charge fall upon the Vicarage, it ought to be repair'd by the Parson.

Charge falls on the Vicar, Parson is to free it.

And so much of Parsonages and Vicarages.

31 H. 6. 14. a.

A Donative is a Spiritual Preferment in the Church, Chappel or Vicarage, which is in the free Gift or Collation of the Patron, without making any Presentation to the Bishop.

A Donative, quid. More 765. Cro. Jac. 63. Yelv. 60.

Neither needeth such Clergy-man have any Admission, Institution, or Induction, by any Mandate from the Bishop, or others; but may by the Patron, or by any other authorized by the Patron, be put into possession.

1 Inst. 334, a.

And such Incumbent is free from the Visitation of the Bishop, or any other than his Patron or his Commissioners, and by consequence freed from Procurations.

* And if the Bishop should take upon him to visit a Donative, and deprive the Incumbent, he runs himself into the danger of a *Præmunire.*

* 8 Ass. p. 29. *A Parish Church may be a Donative.*

And note, That a Parish Church may be a Donative, and have Cure of Souls: And such Donatives cannot lapse, unless by special Agreement at the Foundation; but the Ordinary may compel the Patron to collate.

2 Rolls R. 1. 1 Inst. 344. a. 6 H. 7. 14. a. contra Keble,

* But the Patron cannot collate a Layman, as some have thought, but a Spiritual Person in Holy Orders.

* Yelv. 61. F. N. B. 35. e. f. 1 Inst. 344. a.

Cro. Jac. 63. *How a Donative may be made Preſentative.* 1 Inſt. 344. a. F.N.B. 35. c.

But if the Patron once preſent to a Donative, and the Clerk upon ſuch Preſentation be admitted, inſtituted and inducted, it is thereby for ever after become Preſentative, and ſhall be no longer eſteemed, or uſed, as a Donative.

1 Inſt. 344. a.

But if a Stranger that has no Right, preſents to a Donative, though his Clerk be admitted, inſtituted and inducted; yet that ſhall not alter the Nature of the Living.

The King may Found a Donative, or Licenſe a Subject to do it. 1 Inſt. 344. a.

If the King found a Church, and exempt it from the Viſitation of the Ordinary, it is a Donative, and the King ſhall viſit by his Chancellor.

So it is, if the King found a Church or Chappel, without any ſpecial words.

Ibid.

And the King may give Licenſe to a Subject, to erect or found a Church or Chappel Donative, and exempt it from the Ordinaries Viſitation; and the Patron may in ſuch caſe Viſit by his own Commiſſioners.

A Quare Imp. *lies of a Donative.* 1 Inſt. 344. a. Yelverton 61. F.N.B. 35. e. f.

And a *Quare Impedit* may be brought of a Donative, *quod permittat ipſum præſentare ad Eccleſiam*; but the Declaration in ſuch caſe muſt be ſpecial.

Donatives within the Statute of Simony and Pluralities.

And Donatives are within the Statute againſt Simony, and where they have Cure of Souls, they are likewiſe within the Statute againſt Pluralities.

There

There is another ſort of Church Livings that are commonly called *Sine Cura's*; theſe are ſuch Parſonages as have Vicars indowed with Cure of Souls, as has been ſaid: But theſe are not within the Statute of Pluralities; nor are theſe Livings ſaid to be incompatible: For thoſe Livings are only ſaid to be incompatible that have Cure of Souls; and therefore I conceive there needs no Diſpenſation, or Faculty, for taking one of theſe *Sine Cura's*, though the party had another Living before with Cure of Souls: But herein the party is beſt to be adviſed by ſome Learned Canoniſts; but by the Statute there needs no Diſpenſations.

Sine Cura's, quid.

Livings incompatible. Quære.

And ſo much for Parſonages, Vicarages, Donatives, and *Sine Cura's*: And for other Church Preferments, I ſhall refer the Reader to Mr. *Hughes* Learned Treatiſe of the *Parſons Law*, they being above my Undertaking.

CHAP. XIV.

The fourteenth Chapter shews, What Resignations and Permutations are, and in what manner they may be made, and other matters relating to them; and of Union and Consolidations.

Resignation, quid.

A Resignation is, where a Parson, Vicar, or other beneficed Clergy-man, voluntarily gives up, and surrenders his Charge and Preferment to those from whom he received the same, which may be absolutely, or upon condition.

To whom. Dyer 294.b.

A Resignation must regularly be made to the next immediate Ordinary, and not to the Superior.

To or by a Proctor. Noy 147.

A Resignation may be made by or to a Proctor; but a Church is not void by any such Resignation in absence, till the same be presented, and accepted by the Ordinary: Or a Resignation may be made in the presence of a publick Notary in the absence of the Bishop; and after it is presented and accepted, it is as good as though the Bishop had been present.

Gaytons Case, P. 34 El. C. B.

And

And though regularly Resignations ought to be made to the Bishop, from whom the Clerk, upon his Admission, receives his Charge and Cure; yet a Resignation to the King, as Supream Ordinary, hath been held good.

Resignation may be to the King. Dy. 294. p. 56. Kelway 49. Plo. 498. a.

The usual words of a Resignation are, *Renuntiare, Cedere, Remittere, & Resignare.*

Words of Resignation. Dyer ibid.

Donatives must be resigned to the Patron, and not to the Ordinary; for the Clerk in that Case received his Living immediately from the Patron.

To whom a Donative is to be resigned. Cro. Jac. 63. Yelv. 60. 1 Inst. 344. a.

And if there be two Patrons of a Donative, and the Incumbent resign to one of them, it is good for the whole:

In the Case of one *Gayton*, P. 34 *Eliz.* in the Common Pleas, in a *Quare Impedit* for the Church of *Little Cressingham* in *Norfolk*, a Parson resigned his Benefice in the presence of a publick Notary, *sponte, pure, & simpliciter*, to the use of two upon Condition, *quod si aliqui eorum non admissi fuer' & realem possessionem Ecclesiæ prædictæ adipisci non valeant infra sex menses, quod tunc, &c.*

Cro. Jac. 63. Yelv. 60. *Resignation in presence of a publick Notary.* *Semble resolution.* P. 3 Eliz. rot. 343. C. B.

And in this Case it was very much disputed, whether a Resignation could be Condition; but at last, with advisement with the Civilians, it was Resolved, That a Resignation might be upon Condition.

Permu-

Permutations, quid. Permutations or Exchanges, are where two Clergy-men agree to exchange their Livings, and after they made such Agreement and put it in Writing, they make mutual Resignations upon Condition, in the Form following.

Regist. 306. b.

A Resignation upon Permutation. *Regist. Indic.* 306.

In Dei nomine, Amen. Ego H. *de* W. *Rector Ecclesiæ de* N. Lincoln' Dioces. *volens ipsam Ecclesiam meam cum Ecclesia de* P. *dictæ Dioces. cujus Rector existit Dominus de* W. *certis justis, & legitimis de causis sine dolo & fraude Canonice permutare, ipsam Ecclesiam meam ex causa permutationis hujusmodi & non alio modo, in sacras manus venerabilis in Christo Patris Domini* T. *Dei gratia* Lincoln' *Episcopi resigno, supplicans humiliter & devote, ut* H. *de hujusmodi causa permutationis ipsam resignationem sic factam & non aliter velitis admittere, & negotium permutationis hujusmodi quatenus ad vos attinet fideliter expedire. Et protestor expresse*

preſſe in his ſcriptis, quod ſi dicta permutatio debitum non ſortiatur effectum, quod hujuſmodi mea reſignatio prædicta pro nullo penitus habeatur.

To which is added an Inſtrument containing a Proteſtation, in the Form following:

In Dei nomine, Amen. Ego H. *de* W. *nunc Rector Eccleſiæ de* P. Lincoln' *Dioceſ. & prius Rector Eccleſiæ de* N. *dictæ Dioceſ. proteſtor, dico & allego in his ſcriptis, quod ſi contingat quod hujuſmodi Eccleſia mea de* P. *abſque dolo & culpa meis in hac parte à me aliqualiter evincatur, volo & intendo ad dictam Eccleſiam de* N. *abſque aliqua difficultate libere & licite redire, & eam re-habere juxta Canonicas ſanctiones, & proteſtor inſuper quod non intendo nec volo ab hujuſmodi proteſtatione ſeu effectu ejuſdem recedere* The Proteſtation.

ali-

aliqualiter in futuro; ſed eidem proteſtationi & contentis in eadem, volo & intendo in futuris temporibus firmiter adhærere, juris beneficio in omnibus ſemper ſalvo, &c.

What the effect of this Proteſtation is, I muſt leave to the Civilians to determine, however the intent of the thing agrees well enough with the reaſon of the Common Law; for at the Common Law if a man exchange Lands, and the Land he receives in exchange be evicted, he may repair to his own Lands, and re-enter upon them.

13 E. 4. 3. b. Co. 4. 102. b.

Permutation void, quia *one died before induction.* 45 E. 3. F. *Exchange* 10. Co. 2. 74. b. Perkins tit. *Exchange.*

And it has been Reſolved, That where two Parſons of two ſeveral Churches, by an Inſtrument in Writing, agreed to permute their Churches by way of exchange, and ſeverally reſigned them into the hands of the Ordinary to that intent; and the ſeveral Patrons preſented, according to the intent of the Exchange, and the one Parſon was admitted, inſtituted and inducted; and the other was admitted and inſtituted, but died before induction; that though the induction of the other was abſolute, yet this was ſo directed by the precedent Agreement, which was by way of Exchange, which ought to be executed on both parts in the life of the parties; and the induction could not be made upon Condition; therefore

fore for this reason it was all Resolved to be void.

A Union or Consolidation is where two or more Churches are united and consolidated into one, and may be for a certain time; as for the life of the Incumbent; and then it is but in the nature of a Plurality, or it may be perpetual.

Unions are made by the Ordinary by the consent of the Patrons in the Vacancy, with the License or Confirmation of the King: But if the Churches, or either of them, be full, the consent of the Incumbent is likewise necessary. Cro. El. 500, 501. More 661. 50 E. 3. 28. a. 27. 2 Roll 778. 40 E. 3. 28. a.

By a Statute made in the 37*th* year of *Henry* the Eighth, the Bishop is enabled to unite Churches which are within a mile one of the other, without the King's License or Confirmation, so as one of the Churches be not above six pounds in the Kings Book. Causa 2. 16. q. Et Tempori 1. *See* Dyer 259. p. 19. bone forme du Union. Stat. 37 H. 8. cap. 21.

By another Statute in the 17*th* year of King *Charles* the Second, the Ordinary is enabled in Cities and Corporations to unite Churches, with the consent of the Chief Magistrates, without the Kings License or Confirmation, so the Churches united exceed not 100*l. per Annum.* 17 Car. 2 c. 3.

The uniting of Churches ought to be *causa utilitatis sive necessitatis*, as vicinity, paucity of Inhabitants, smalness of the Livings, &c.

And if two or more Churches shall be united upon a false suggestion, it should seem the Union is void, both by the Common and Canon Law. Cro. El. 501. 2 Rolls 778.

At

At the Common Law, it ſhould ſeem, Churches might be united of any value by the Ordinary, with the conſent of the Patrons and the Kings Licenſe or Confirmation.

Cro.Eliz.501. per Gaudy & Fenner.

But I find two Judges affirm, That the Ordinary might unite Poor Livings without the King's Licenſe or Conſent; but not great ones.

Whence the Judges took this difference, I am to ſeek: For in the height of Popery I find the Kings Licenſe or Confirmation always concurrent.

50 E.3.27.2. 11 H.7.82.b. 92.'. F.Grant.104.

And ſo much for Unions and Conſolidations.

Gloria Deo Omnipotenti.

The End of the Firſt Part.

BOOK II.

THE LAW OF TYTHES, OR TYTHING.

THE

Second Part:

BEING THE

LAW

OF

TYTHES or TYTHING.

SHEWING

In what manner all manner of Tythes, Offerings, Mortuaries, and all other Church Duties are to be paid, and in what Courts and manner they may be recovered, and to what Charges they are ſubject.

With many other things fit for all People, but eſpecially Clergy-Men, to know.

Written by Sir *SYMON DEGGE*, Kt.

LONDON,
Printed by the Aſſigns of *Richard* and *Edward Atkins* Eſquires, for *R. Sare* and *J. Hindmarſh*.

To his Worthy and Reverend Son in Law, Mr. *Anthony Trollop*, Rector of *Norbury* in *Derbyshire*.

Dear Son,

IT is now above thirty years, ſince the Tything Table, publiſhed many years ago, came to my Hand; and upon peruſal thereof finding that the Common Laws and Canon Laws differed in many things, I thought it would be a Work grateful to the Clergy, and uſeful to others, to publiſh ſomething in order to the reconciling of them: To which end I had gathered together ſome Materials; but the War coming immediately on, and after that the Eccleſiaſtical

Courts being laid aſide, and other Courſes found out for the recovery of Tythes, I deſiſted the farther Proſecution of that Deſign, until it was revived at your requeſt, ſeconded by ſome other Reverend Divines; whereupon, looking up my old Notes, and adding ſuch Judgments and Reſolutions, that I have ſince come to the knowledge of, the whole is reduced to the form I here preſent it to you. You have moſt Right to it, and I heartily wiſh it may be of as great Service and Advantage to you, and all the Reverend Clergy, as is deſired by him that is

Your affectionate

loving Father

S. D.

THE

THE LAVV OF TYTHES or TYTHING.

CHAP. I.

The first Chapter shews what Tythes are, the several sorts and kinds thereof, and in what manner due.

HAving in the former part of this Discourse shewed the Worthy and Reverend Clergy-Men in what manner they may lawfully and justifiably attain to such Preferments in the Church as they are capable of, and in what manner they may avoid all the perils and dangers that attend the Beneficed Clergy-Men. It rests now that I shew them what Profits they may justly challenge to belong to their Church Preferments, and in what manner

ner to be paid, and how to be recovered, if need require. And first of Tythes, which the Canonists define to be,

Definition. *A tenth part or portion of Increase, commanded to be paid to the Sons of* Levi *for their Ministry, wherein they served in the Tabernacle.*

Or, as some others define them they are,

Omnium bonorum licite quæsitorum quota pars Deo Divina institutione debita.

But the Common Lawyers define them to be,

Co. 11. 13.b. *An Ecclesiastical Inheritance Collateral to the Estate of the Land, and of their own proper Nature due only to an Ecclesiastical Person, by the Ecclesiastical Laws.*

And for that reason no unity of Possession can extinct or suspend them; but they, notwithstanding such unity remain *in esse*, and may be demised or granted, notwithstanding such unity: But may more properly in my judgment, be defined to be,

A tenth part, or some other thing in lieu thereof, of all the increase yearly arising forth of the profits of the Lands and Stock, or raised by the Industry of the Parishioner, and properly due to the Clergy that have the Cure of the Souls in the Parish where they arise.

Division. And by some Canonists Tythes have been divided only into two kinds, that is, Predial and Personal: And in this manner of division they comprehend all manner of Tythes that arise either immediately or mediately from the Land, under the

the name of Predial Tythes; which they again diſtinguiſh into predial, mediate and immediate; under which they comprehend the Tythes of Corn, Hay, Wood, Herbs, and all other things that either come from the ground by Manurance, or of its own nature; and under the name of Tythes Predial mediate, is comprehended the Tythes of all manner of Cattel and other things that receive their nouriſhment from the Ground. Doct. & Stud. l. 2. c. 55. p. 168. b. Lindwood c. *Quoniam propter verbis dividend. eſt decima.*

But Tythes by the Common Lawyers (and which diviſion I ſhall obſerve in my Diſcourſe) are divided into Predial, Mixt and Perſonal: And according to this diviſion all Tythes that ariſe from the Ground, as before is ſaid, immediately, are only accounted to be Predial: And thoſe that ariſe from Cattel and other things, that receive their nouriſhment immediately from the Ground, they call Mixt; and thoſe that ariſe from the Labour and Induſtry of Man alone, Perſonal. 2 Inſt. 649. Roll 1. 635. a. Lindwood c. *Quoniam propter verbis talibus decimis.*

Tythes again both by the Common Lawyers and Canoniſts are divided into great Tythes, in Latin *majores, ſeu groſſæ decimæ*; and into ſmall Tythes in Latin *minores*, or *minutæ decimæ*. And in this diviſion Corn, Hay and Wood are all accounted groſs or great Tythes. But there has been ſome queſtion whether Tythe Wood ſhould be accounted a great or minute Tythe; and reſolved that if a Vicar be only indowed with the ſmall Tythes, and have by reaſon thereof always had Tythe Rolls 1. 643. v. 2.

2 Bulſt. 27. Wood, that in ſuch caſe it ſhall be accounted a ſmall Tythe, otherwiſe it is to be accounted amongſt the great Tythes. And Litt.Rep.244. Woods has been twice adjudged to be a ſmall Tythe, as *Littleton* Reports.

Cro. El. 467. Hutton 77. Cro. Car. 28. Rolls 1. 643. v. 3. But all manner of Tythes of Gardens, Herbs, Roots, Fruit, Saffron, Woad, whether ſowed in Fields or Gardens, Flax, Hemp, Hops, Rape, and all other Predial, Perſonal and mixt Tythes are accounted

Palmer 219. 220. *inter minutas decimas*; but in *Udal*'s and *Tindal*'s Caſe, *Hutton* 77. in ſome caſes Hops, Woad, *&c.* may be great Tythes in places where they are much ſowed.

Lindwood c. *Quoniam propter verb. talibus decimis.* And herein the Cuſtom of *England* is kind to the poor Vicars, making many things to be allowed for minute Tythes that are not ſo in others.

I have been the longer in this diviſion of Tythes, between great Tythes and ſmall Tythes, becauſe many Vicarages are endowed with the ſmall Tythes only; and in ſome old Indowments you will find the word *Alteragium*, which by cuſtom may as well comprehend the ſmall Tythes, as ſuch Profits as ariſe from the Altar.

Spelm. Gloſſ. 28. Cro.El.578 Hetly 135. Winch. 70. *Quo Jure debit.*

Now perhaps it may be expected I ſhould ſay ſomething to ſatisfie the Reader by what Law Tythes became due under the Goſpel. But in that point I find ſo great a difference between the Canoniſts, School-Men and Divines, that it would be a great preſumption in me to take upon me to determine the point; the rather becauſe I am informed by a reverend, learned and grave Divine, that

that the Learned *Selden* retracted his Opinion therein; and what it was you may see in the places noted in the Margent: But so far as I have observed, they all agree in this, That Tythes *quoad sustentationem Cleri vel Ministrorum Dei* are *Jure Divino:* So that the sole question amongst all these Learned Men is about the quantity, or *quota pars.* But be they due *jure Divino, jure Ecclesiastico,* or *jure Humano,* I conceive the difference cannot be great, since, as it must necessarily be confessed, they have been given and consecrated *Deo & Sanctæ Ecclesiæ*; and so being dedicated to God and his Service (in my poor judgment) the taking them away from the proper use and end, cannot be less Sacrilegious, than if they were without dispute *Jure Divino.* I shall not therefore stuff this present Discourse with the Arguments of any side, but shall leave the Learned to their own conceits, it serving my purpose that they be due by any Law, Divine, Humane or Ecclesiastical. My next Examination shall be to whom they are due.

Heylins Hist. of *Presbytery* 391. Seld. Hist. decim c. 5. Sect. 4. c. 7.

And in the end of the Epistle to the Reader.

The Question.

Doct. & Stud. l. 2. c. 55. f. 164. b. 165. a.

CHAP.

CHAP. II.

The second Chapter shews to whom Tythes are due, and by whom to be paid.

To whom Tythes are due to be paid.

HAving shewed in the former Chapter what Tythes are, and the several kinds thereof, I shall in the next place shew to whom the same are due.

That there were Infeudations of Tythes before the Parochial Rights were setled, is without dispute both here in *England*, and in other Christian Kingdoms and Commonwealths: In which particular the curious may satisfie themselves in Mr. *Selden*'s *History of Tythes*, and other Authors. And it is more clear, that before the time that the Parochial Right of Tythes were setled, that the Owners of Lands might grant their Tythes to Ecclesiastical or Religious Persons (a multitude of Presidents, whereof the Reader for his satisfaction may find in the *Monasticon Anglicanum* of Mr. *Dugdale*:) so that by this means the whole Tythes of some Parishes, and divers great Portions out of other Parishes, were granted to Abbots, Priors, *&c.* And some to the Parsons and Rectors of other Parishes; which is the reason why at this day there are several Portions of Tythes held from the Parish Churches by Impropriators and the Rectors of other Parish Churches.

Selden's Hist. decim. 178, &c. Tho. Aq. Sum. 2a. 2æ. q. 88. art. 3. *conclusions.*

When

When the Parochial Right of Tythes was firſt ſetled, there hath been (as ſhould ſeem) a vulgar Error: For 'tis frequently ſaid in our Common Law Books, that before the General Council of *Lateran*, which was held 1179. that every one was at liberty to give his Tythes to what Spiritual, Eccleſiaſtical or Religious perſon he pleaſed; but that by that Council the Parochial Right of them was ſetled. Neither was this an Error of the Common Lawyers only, for Mr. *Lindwood*, a Learned Doctor of the Civil and Canon Laws, that lived in the time of *H.* 5. about two hundred and fifty years ago, tells us, that

When the Parochial Right of Tythes firſt began.

10 H. 7. 8. a.. 43 E. 3. 5. Doct. & Stud. l. 2. c. 55. Co. 2. 44. b. Dyer 84, &c.

Bene potuerunt Laici decimas in feudum retinere, & eas alteri Eccleſiæ dare ante Concilium Lateranenſe, non tamen poſt, &c.

Lindwood c. locat. & conduct. verb. portion.

But there is no Canon in that Council to be found, whereby the Parochial Right of Tythes was ſetled, nor was the Parochial Right of Tythes ſetled till the year 1200. and then not by any Canon, but by a decretal Epiſtle of Pope *Innocent* the Third, a Brief of Epiſtle here follows, as I find it in Mr. *Selden*'s *Hiſtory of Tythes*, and in Sir *Edward Cook*'s Inſtitutes.

Seldens Hiſt. decim. 231. 2 Inſt. 641.

Pervenit ad audientiam noſtram, quod multi in Dioceſi tua Decimas ſuas integras vel duas partes ipſarum non illis Eccleſiis, in quarum Parochiis habitant, vel ubi prædia habent, & a quibus Eccleſiaſtica percipiunt Sacramenta, perſolvunt; ſed eas aliis pro ſua diſtribuunt voluntate: Cum igitur inconveniens eſſe videatur & a ratione diſſimile, ut Eccleſiæ

Innocent 3. Ep. Decret. l. 2. p. 452. Edit. Colen. Seldens *Hiſt. of Tythes*, 231.

Innocent 3. tells us in his Epistles, that Tythes are due to the Parish Priest de communi jure. Vid. Decretal. Greg. l. 3. de decimis c. 30. Cum in tua Dioces. & ibid. c. 29. Cum contingat.

Ecclesiæ, quæ Spiritualia seminant, metere non debeant a suis Parochianis temporalia, & habere, Fraternitati tuæ (being directed to the Archbishop of *Canterbury*) *authoritate præsentium indulgemus, ut liceat tibi super hoc, non obstante contradictione vel appellatione cujuslibet seu consuetudine hactenus observata, quod canonicum fuerit ordinare, & facere quod statueris per Censuram Ecclesiasticam firmiter observari: Nulli ergo*, &c. *Confirmationis*, &c. Datum Lateran. 2 Nonas Julii.

I must acknowledge I give the Reader this a little imperfect for want of the Original; and it was Sir *Edward Coke*'s Case also; for I perceive he borrowed his from Mr. *Selden*.

But some have fancied (and perhaps not without reason; for this seems not to be a general Decree, but a particular Instruction to the Archbishop of *Canterbury*) that the Parochial Right of Tythes was not generally setled of long after, that is, by a Canon made in the Council of *Lyons*, which was in the year of our Lord 1274. under *Gregory* the Tenth, in which Council, it is said, there is a Canon for the setling the Parochial Right of Tythes, but not found among the Canons of that Council. But whether that were the Original, or a Confirmation of some other Decree or Council, I dare not take upon me to judge: But certain it is, that about this Century the Parochial Right of Tythes was setled in general. But though this decretal Epistle of Pope *Innocent* the Third be

Vide Selden's *Hist. of Tythes*, 147.

be not general, yet it was Obligatory as to the Province of *Canterbury*; ſo that in that Province the Parochial Right of Tythes may take its date from the time of that decretal Epiſtle, which was, as above is ſaid, in the year 1200.

Mr. Doctor *Godolphin* in his *Repertitorium Canonicum* ſeems not ſatisfied, that it is a vulgar Error in our Books, that before the Council of *Lateran*, every one was at liberty to give his Tythes to what Spiritual or Religious Perſon he pleaſed; and to prove a ſettlement of a Parochial Right of Tythes by a Council of *Lateran*, he cites a Canon made by *Innocent* the Third in the ſecond Council of *Lateran*, held in the year of our Lord 1120. ſixty years before the Council held under *Alexander* the Third, 1179. or as ſome have it 1180. where he ſays it was decreed that the Religious Perſons, *viz.* the *Ciſtertians*, *Hoſpitalers*, *Templers*, and thoſe of St. *John* of *Jeruſalem*, which by the Popes *Paſchal* and *Adrian* were exempted from payment of Tythes, ſhould pay the ſame to the Parochial Incumbent, whereby a Parochial Right of Tythes was ſetled by a *Lateran* Council, as he concludes. Page 358.

But I wonder the Doctor ſhould miſtake himſelf ſo much; for firſt, there was no *Lateran* Council in the year 1120. and he himſelf in his Catalogue of the Councils mentions none to be held that year, but aſſigns the ſecond *Lateran* Council to be held in the year 1131. wherein the Doctor is again miſtaken; for the ſecond *Lateran* Council Page 616.

Council that is not reckon'd amongst the General Councils, was held under *Paschal* the Second 1112. And the second General Council held in the *Lateran*, was held under *Innocent* the Second, *Anno* 1139. but of neither of these Councils are any Acts to be produced; besides, Pope *Innocent* the Third entred not upon the Papacy till 1199. and so could hold no Council 1120.

But I presume the Doctor meant the Council of *Lateran* held under *Innocent* the Third, 1215. where there is a Canon something like that the Doctor mentions; for by that Council it is decreed, That the *Cistertians*, and all other Orders priviledged from the Payment of Tythes (without enumerating any more of the Orders) should pay Tythes of such Lands as they should purchase after that Council, although they held them in their own proper hands; *Ecclesiis quibus ratione prædiorum antea solvebantur, nisi cum ipsis Ecclesiis aliter duxerint componendum:* But this can settle no Parochial Right, for it is only that the Tythes shall be paid to the Churches, *quibus antea solvebantur*. And that the Parochial Right of Tythes was setled before that Council, appears clearly by the very next Canon of that Council: For there being Complaints made in that Council that divers Clerks, as well Regular as Secular, upon Grants and Leases of their Lands, took Covenants of their Grantees and Tenants to pay their Tythes to the Grantors in prejudice of the Parish Priests, it

Decret. Greg. l. 3. tit. 30. cap. 34.

Can. 55.

was

was therefore decreed, *quod quicquid fuerit occaſione hujuſmodi pacti præceptum Eccleſiæ parochiali reddatur*; this word *reddatur* proves ſufficiently that the Parochial Right was ſetled before that time; and Pope *Innocent* the Third, in ſeveral of his Epiſtles, declares that they are due to the Pariſh Prieſts *de communi jure.*

Greg. Decret. l. 3. de decim. c. 30. Cum tua Dioceſ. & ibid. c. 19. cum contingat.

And that the Parochial Right of Tythes was not ſetled by any General Council, but by a Papal Conſtitution, appears clearly by what Sir *Robert Parning* ſays, who lived within an hundred years of this time, and was after Chief Juſtice of the Common-Pleas, who could not be ignorant how the Parochial Right of Tithes was ſetled; and he ſays, That in ancient time before a new Conſtitution made by the Pope, the Patron of a Church might grant Tythes within his Pariſh to another Pariſh.

7 E. 3. 5. a.

Nota.

But whether the Parochial Right of Tythes was ſetled the one way or the other, it ſeems that all former Grants were nullified, or otherwiſe the Conſtitution had wrought ſmall effect to the end it was deſigned, the greateſt part of the Tythes being before that time granted to Monaſteries, as may be obſerved in the *Monaſticon Anglicanum.*

But notwithſtanding this Conſtitution, many of the Abbots held out againſt the Pariſh Prieſts, who durſt not, or were not able to conteſt them, and after claimed the Tythes by Preſcription, that is to ſay, by forty years poſſeſſion, which is a Preſcription allowed by the Eccleſiaſtical Courts,

Courts; and that's the reason that many Portions of Tythes are at this day held by Impropriators that had been gained by the Abbots by such Prescriptions, and not by their ancient Grants, and by this means they got their Prescription *de non decimando*: For the Canon Law does allow one Clergy-Man to prescribe against another, but not a Lay-Man by any means to the prejudice of the Church. But if a Clergy-Man, Secular or Regular, continue to have the possession of a portion of Tythes in another Parish quietly forty years, this shall make him a good Title against the proper Incumbent, and the same Law holds *de non decimando*: For if a Clergy-Man Religious, Secular or Regular, hold any Land forty years together Tythe free, he shall hold Tythe free for ever; but if a Lay-man hold Lands Tythe free a thousand years, it avails him nothing by that Law.

Greg. Decret. l. 2. tit. 26. c. 6. ad aures nostras.

Ibid. c. 7. causam quæ, &c.

But after the Parochial Right of Tythes was setled, it is clear, that no Lay-man was capable of Tythes in pernancy, but in particular Cases, till the Statutes, by which the Monasteries and Religious Houses were dissolved, enabled them: But in some special Cases Lay-men were capable of Tythes in pernancy, as in the Case of *Pigot* and *Heron* cited in the Bishop of *Winchester*'s Case, where the Case is put, That the Lord of a Manor, and all those whose Estate he had in the Manor time out of mind, had paid to the Parson of *D.* (in which Parish the Manor lay) for the time being, a certain Sum for the maintenance

Seldens Hist. decim. 398. *and in his Review* 478.

Co. 2. 44. a. *Lay-men capable of Tythes in Pernancy.*

Co. 2. 45. a.

tenance of Divine Service in contentation of all Tythes arising within the said Manor, and that in consideration thereof he, and all those whose Estates he had in the said Manor by the time aforesaid, had and enjoyed all the Tythes arising in the said Manor: And in this case it was adjudged, That the Lord of the Manor might have these Tythes in pernancy, and sue for the same in the *Spiritual Court*; but a Man cannot claim Tythes generally as part of, or belonging to a Manor. More 599.

Lay-Men capable of Tythes in Pernancy by the Statutes of the dissolution of Abbeys.

But since the several Statutes made for the dissolution of Monasteries, those Tythes which were appropriated to the Religious Houses so dissolved are become Lay-Fee, and any Lay-Men by the Laws of this Realm are capable of them in pernancy, and may sue for the same in the Spiritual Courts.

All the Tythes belonging to the Rector prima facie.

Portions by Prescription.

Greg. Decret. prescrip. 14 H. 4. 17. a. 44 Ass. p. 25. Rolls 1.657. 0. Seldens *Hist. of Tythes*, 161.

How Prescriptions are to be proved.

Seldens Hist. decim. 364. 209.

But since the Parochial Right of Tythes was setled *prima facie*, all Tythes not appropriated belong to the Rector of the Parish-Church wherein they arise; yet notwithstanding the Parson of one Parish may prescribe to have a Portion of Tythes in the Parish of another; and so might Abbots, Priors and other Religious Persons prescribe to have Portions of Tythes in Parishes whereof they had not the Advowsons, and by consequence the Patentees from the Crown and the Impropriators may claim the same by prescriptions in the Abbots, Priors, *&c.* and the usage since the dissolution will serve to prove the

Selden 399.

prescription and usage in the Abbots, &c. that they held the same so time out of mind. But no Lay-Man at this day is capable of Tythes in pernancy but under the Statutes of Dissolution, unless by a Grant by the Bishop, Parson and Patron made before the disabling Statutes.

Extra parochial Tythes.
7 E. 3.

As for Extra-Parochial Tythes, there have been some differing Opinions. Sir *William Herle* was of Opinion, that they belonged to the Bishop of the Dioceſs, as general Parson of his whole Dioceſs, grounding his Opinion, as it should seem, upon the Canon Law; but there was never any such Canon received or approved in this Kingdom.

Seldens Hist. decim. 108.

21 Ass. 75.
2 Inst. 647.
Rolls 1. 657.
o..
Seld. Hist. decim. 365.
*10 H. 7. 18. a.
Co. 5. part 128.
Ryleys Records 50.

But it hath been resolved both in Parliament and by several Judgments at Common Law, that all Extra-Parochial Tythes belong to the King, who is * a mixt Person and capable of Tythes at the Common Law in pernancy.

In particular Cases to whom Tythes are due.

Now having shewed in general who are capable of Tythes in pernancy at this day, and to whom of common right they belong, I shall proceed to shew to whom they are due in some particular Cases.

Cro. El 161.
Against the Parsons own Lease.
Owen 39.
Portman vers. Hind. M. 31 & 32 El. B.R.
Co. 11. 13. b.
Dyer 43 p. 22. *est Quære.*

If a Parson Lease his Glebe-Lands, and do not also grant the Tythes thereof, the Tenant shall pay the Parson Tythes: Nay though the Parson Lease his Lands *cum omnibus proficuis & commoditatibus eidem spectantibus*, rendring Rent, *pro omnibus exactionibus & demandis quibuscunque*; yet notwithstanding the Tenant shall pay the Parson the Tythes arising upon these Lands.

The

The like Law it is, if an Impropriator, Vicar, &c. make such Lease, &c. Hetly 31.

And as the Parson shall have Tythe of his own Tenant, so he shall have of his Feoffee: And if a Parson hath Lands in the same Parish whereof he is Parson, and demises his Tythes, he shall pay Tythes to his Farmer. *Against his Feoffment.* Co. l. 111. a. C. 11. 13. b. Cro. El. 261.

If a Parson sow his Ground, and then sell the Emblements (I mean the Corn growing upon the Ground) the buyer of the Corn shall pay the Tythe of it to the Parson that sowed and sold the Corn. Dyer 43. p. 21. Moyle versus Ewre. Hill. 11. Jac. B. R. Rolls 655. k. 1.

So if a Parson sow his Glebe-Land, and then Lease the Land, the Tenant shall pay his Parson Landlord Tythe of this Corn.

There has been some Opinions, that if the Parishioner sow his Lands, and before severance the Parson dye, that in this Case the Parsons Executors and not his Successor should have the Tythes. C. 10. 88. b. 21 H. 30. a. Uphaven vers. Humphries 40. El. per Poph. & Gawdy ver. Fenner.

And there have been some Opinions, that if the Parson sow his Glebe and dye before severance, that his Executors should not pay Tythes of this Corn.

But both these Cases, if they had been Law, are put out of doubt by the Statute of 28 *H.* 8. which hath given all the Tythes and other Profits belonging to the Rectory to the Successor, from the death of the last Incumbent, which hath taken away all pretence the Executors could have in such Cases. But notwithstanding this Statute, I take the Law to be clear that the Executor of the Parson shall have the Corn sown by his Testator in his life-time, as the *To whom the Tythes in the Vacation belong.* Stat. 28 H. 8. c. 11. Rolls 655. k. 3.

Executors of other Tenants for Life have by the Law.

Cap. Nullus Rector verb. decesserint. *Whether the Vicar and Parson shall pay to each other.* More 910. 457. Cromptons Case P. 7. Car. 1. B. R. Hetly 135. Cro. El. 578. Winch. 70. *Tythes may belong to a Chappel.* More 457. 910. Hetly 135. Winch. 701. 13 Ass. p. 2. Dyer 87. Rast. Ent. Tresp. in dismes 4. & Præmunire in Rome 4. * Decret. Greg. de decim. Cum sunt Glos. verbo diversa. 17 Car. 2. Cap. 3. *A Law for the reuniting Impropriations to Parish Churches.*

And so it is setled by the Statute of 28 *H.* 8. before mentioned: But if the Parson, Vicar, *&c.* sow the Land and be deprived, resign or accept another Living, the Successor shall have the Tythe.

It hath been held, that the Vicar upon a general Indowment shall not pay Tythes of his Glebe to the Parson, or the Fruits that arise from the same, *Quid decimas Ecclesia Ecclesiæ reddere non debet*, without special Words.

So if a Vicar be indowed of all the small Tythes arising within the Parish, yet he shall not have the small Tythes arising upon the Glebe-Lands of the Parson.

Tythes by prescription may be appendant to an ancient Chappel.

* And note, That by the Canon Law, personal Tythes are to be paid where the Party communicates, but predial to the Parson within whose Parish the Land lies *Lindwood cap. Sancta Ecclesia. De decimis.* in the Glos's *verbo negotionum.*

By an Act of Parliament made in the seventeenth year of the Reign of King *Charles* the II. It is Enacted, That every Owner or Proprietor, Owners or Proprietors of any Impropriation, Tythes or portions of Tythes in any Parish or Chapelry within the Kingdom of *England*, or Dominion of *Wales*, is, are or shall be by virtue of this Act inabled and impowred to give and bestow, unite and aver the same, or any part thereof, unto the Par-

Parſonage or Vicarage of the ſaid Church or Chappel where the ſame do lie or ariſe, or ſettle the ſame in Truſt for the benefit of the ſame Parſonage or Vicarage, or of the Curate or Curates there ſucceſſively, where the Parſonage is Impropriate, or no Vicar indowed, according to his or their reſpective Eſtates, without any Licence of Mortmain, any Law or Statute to the contrary notwithſtanding.

And it is farther Enacted by the ſame Act, That if the ſetled Maintainance of ſuch Parſonages, Vicarages, Churches and Chappels ſo united, or of any Parſonage or Vicarage with Cure, in the Kingdom of *England* or Dominion of *Wales*, ſhall not amount to the full Sum of one hundred pounds *per Annum*, clear and above repriſes, that then it ſhall and may be lawful for the Parſon, Vicar or Incumbent of the ſame and his Succeſſors, to take, receive and purchaſe to him and his Succeſſors, Lands, Tenements, Rents, Tythes or other Hereditaments, without any Licence of Mortmain, any Law or Statute to the contrary notwithſtanding.

This is an excellent Law, which I hope may turn very much to the benefit of the Church, and there is another beneficial Law for the Church, made in the 29th year of the reign of the late King *Charles* the Second, that relates, Whereas divers Arch Biſhops, Biſhops, Deans and Chapters, and other Eccleſiaſtical Perſons, in obedience to his Majeſties Letters, bearing date the firſt of *June* in the twelfth

29 Car. 2. cap. *An Act for the confirming and continuance of Augmentations.*

year of his Majesties Reign, and out of a pious care to improve poor Vicarages and Curacies, where the Indowments thereof were found too small to afford a competent Maintainance to those that serve the Cure, have, since his Majesties happy return upon the renewing of Leases of Rectories or Tythes impropriate or appropriate, made or may hereafter make divers reservations beyond the ancient Rent, to the intent the same should or might become payable to the said Vicars or Curates, in augmentation of their Indowments, which have been for the most part enjoyed accordingly.

But in regard such reservations were not made to the Vicars or Curates, or if they were, no convenient remedy could be had by such Vicars or Curates, for the recovery thereof, and they were not at the time thereof capable of taking any to their own use, whereupon the provision will depend upon the good pleasure of the Successor, and may in time be disappointed. For establishing whereof, it is Enacted, That all and every Augmentation of what nature soever, granted, reserved or agreed to be made payable since the first day of *June* in the twelfth year of his said Majesties Reign, which shall at any time hereafter be granted, reserved or made payable to any Vicar or Curate, or reserved by way of increase of Rent to the Lessor, but intended to be to and for the use or behoof of any Vicar or Curate, or by any Arch-Bishop, Bishop, Dean, Provost,

voſt, Dean and Chapter, Arch-Deacon, Prebendary, or other Eccleſiaſtical Corporation, perſon or perſons whatſoever, ſo making the ſaid reſervation, out of any Rectory Impropriate or portion of Tythes belonging to any Arch-Biſhop, Biſhop, Dean, Provoſt, Dean and Chapter, or other Eccleſiaſtical Corporation, perſon or perſons, ſhall be deemed and adjudged to continue and remain, as well during the continuance of the eſtate or term upon which the ſaid Augmentations were granted, reſerved or agreed to be made payable, as afterwards in whoſe hands ſoever the ſaid Rectory or portion of Tythes ſhall be chargable therewith, whether the ſame be reſerved again or not. And the ſaid Vicars and Curates reſpectively are hereby adjudged to be in the actual poſſeſſion thereof, for the uſe of themſelves and their Succeſſors, and the ſame ſhall for ever hereafter be taken, received and enjoyed by the ſaid Vicars and Curates and their Succeſſors, as well during the continuance of the Term and Eſtate on which the ſaid Augmentations were granted, reſerved or Agreed to be made payable as afterwards: and the ſaid Vicars and Curates ſhall have remedy for the ſame, either by Diſtreſs upon the Rectory Impropriate, or portions of Tythes charged therewith, or by Action of Debt againſt that perſon who ought to have payed the ſame, his Executors or Adminiſtrators, any disability in the perſon or perſons, Bodies Politick or Corporate ſo granting, or any diſabilty or incapacity in the

Vicars or Curates to whom or for whose use or benefit the same were granted or intended to be granted, the Statute of Mortmain or any other Law, Custom, or other matter or thing whatsoever to the contrary notwithstanding.

None to be confirmed which exceed one Moiety of the Rectory, &c.

Provided always, That no future Augmentation be confirmed by virtue of this Act, which shall exceed one moiety of the clear yearly value, above all repriſe of the Rectory impropriate out of which the same shall be granted or reserved.

And to the end the said Vicars and Curates may the better make appear the certainty of the said Augmentations. Be it Enacted, *&c.* That every Arch-Bishop, Bishop, Dean and Chapter respectively, on or before the 29th day of *September* next coming, shall cause every Lease or Grant wherein any Augmentation is made, to be fairly entred into a Book of Parchment to be kept by their respective Registers for that purpose. And every Dean, Arch-Deacon, Prebendary or other Ecclesiastical person respectively, shall cause every Lease or Grant whereupon such Augmentation hath been made, by himself, his Predecessor or Predecessors, to be entred in the said Book to be kept by the Register of the Bishop of the Diocess, for entring whereof no Fee shall be paid nor any thing demanded, save only a reasonable Reward to the Clerk for the entring the same, not exceeding 5 *s.* which said Entry being examined by the respective Arch-Bishop, Bishop or Dean, and by them respectively at-

atteſted in the ſame Book to be a true Copy of the Original Leaſe or Grant, and the Augmentation in the ſame was intended for ſuch uſe, ſhall be as a Record, a true Copy whereof proved by Witneſſes to be a true Copy ſhall be deemed, taken, adjudged and expounded to be good and ſufficient Evidence in the Law, wherein the ſaid Vicars and Curates reſpectively, ſhall and may by virtue of this Act from time to time recover the benefit of ſuch Augmentation.

Augmentations continued though not expreſt in any new Leaſe.

And be it farther Enacted that where any Arch-Biſhop, Biſhop, Dean and Chapter, or any other Eccleſiaſtical Corporation or perſon whatſoever, upon the renewing or granting any Leaſe or Eſtate, have made any Agreement for an Augmentation for the Vicar or Curate, and the ſaid Augmentation hath for any time been accordingly paid, although the ſaid Agreement is not expreſt or mentioned in the ſaid Leaſe or Grant, every ſuch Eccleſiaſtical perſon ſhall cauſe the ſubſtance of ſuch Agreement to be entred in the ſaid Book, to remain for a Memorial of it to perpetuity.

And it is farther Enacted, That ſuch Augmentation ſo entred ſhall likewiſe continue and be for ever hereafter good and available in the Law, for the benefit of the Vicar or Curate for whom it was intended and their Succeſſors, as well againſt the Arch-Biſhop, Biſhop or Eccleſiaſtical Corporation or Perſon who agreed for the ſame, and his and their Succeſſors, as

as against every other Person enjoying the said Rectories or Portions of Tythes intended to be charged therewith in the same manner, and for which they shall have the same remedy as they should or ought to have by virtue of this Act, as if the same had been mentioned and reserved in and by the Lease.

Such Reservations shall have favourable Constructions.

And relievable by Commissioners for Charitable uses.

And if any question shall hereafter arise concerning the validity of such Grants, or any other matter or thing in this Act mentioned and contained, such favourable constructions, and such farther remedy if need be, shall be had and made for the benefit of such Vicars and Curates as heretofore have been had and made, or may be had for other Charitable uses.

Leases made, wherein the Augmentation shall not be mentioned, to be void.

And it is farther Enacted, That if upon the surrender, expiration or other determination of any Lease wherein such Augmentation as aforesaid, hath or shall be granted, any new Lease of the Premisses or any part thereof be made without expres continuance of the said Augmentation, every such new Lease shall be utterly void to all intents and purposes.

Proviso for a Lease of the Parsonage of Stourton *in* Nottinghamshire.

There is a Proviso in this Act, That this Act should not invalidate a Lease made by the Dean and Chapter of *York*, bearing date the nineteenth day of *October*, 1676. of the Parsonage of *Stourton* in the County of *Nottingham*.

Another Proviso not to invalidate a Lease to Arthur Sprey.

And another Proviso, That this Act shall not invalidate another Lease made by the Dean and Chapter of *Oxon* to one *Arthur Sprey*.

CHAP.

CHAP. III.

The third Chapter ſhews of what things Tythes are due, and in what manner the Tythes of Hay and Corn are to be paid.

Of what things Tythes are to be paid.

TYthes regularly are to be paid of all things annually ariſing from the Ground, either of themſelves, or by the Culture and induſtry of the Pariſhioner, without any deduction of charge in their proper kinds, as ſoon as the ſame may be ſeparated and divided from the nine parts, in Sheaves, Garbs or Heaps. But the manner and form of the payment of Tythes is for the moſt part governed by the cuſtom of the place: And therefore if by cuſtom the tenth part of Corn or Hay hath been meaſured forth growing upon the Lands, as 'tis in ſome parts of *Lincolnſhire*, this manner of Tything is to be obſerved; for in what manner ſoever the Tythe hath been paid time out of mind, in ſuch manner it ſtill ought to be paid; and therefore where Tythe-Corn hath been paid time out of mind, in Sheaves or Garbs bound up, it is no good payment to leave it in Bonds unbound, as I have known ſome contentious Pariſhioners do.

Co. 11. 160. F. N. B. 53. E.

Linwood c. Quoniam propter verb. non deductis expenſis.

How Tythes of Corn are to be paid.

Stat. 27 H. 8. c. 20. 32 H. 8. c. 7. Latch. 125.

And it ſhould ſeem that the Pariſhioner of Common right ought to bind his Corn in Sheaves. See *Rolls* 1. 644. y. 5.

More 913.

And

And where the custom was that the Parson should have the tenth Land from the Hedge, and the Parishioner neglects to sow the tenth Land, the Parson shall not have his Tythe in kind, but a special Action on this Case for not sowing it.

How the Tythe of Hay is to be paid.
Hob. 250.
Rolls 1.644. y. 1, 2, 5, 6.

So for the Tythe of Hay, if the Parishioner have used to make it into Haycocks before they have set forth their Tythes, they must do so still; but where there is no such custom, they may set it forth in Grass-cocks.

The same order ought to be observed in all other things arising from the Ground, as Rape, Saffron, *&c.* and other Fruit.

Rakings.
2 Inst. 652.
Cro. El. 660.
More 278.
Cro. Jac. 42.

But no Tythes are to be paid for the rakings of Corn, unless the Parishioner fraudulently scatter his Corn to couzen the Parson of his Tythes. *Roll* 1. 644. y. 5. *Littleton* 31.

Yelverton 86.
Hetly 133.
Rolls 1. 645. Z. 11, 12 & 13.
Aftermaths.

Neither are Tythes to be paid of the after-maths of Meadows, nor of balks in Corn-fields, or of the stubble of Corn: But if the Meadows be so rich, that there are two Crops of Hay got in one Year, or two Crops of Woad, *&c.* there the Parson shall have Tythe as well of the latter as of the former Crop.

Rolls 1. 647. 2. 11, 12.
Green Peaſe.

If a Man gather green Peaſe to spend in his House, and there spend them in his Family, no Tythes shall be paid for the same; but if he gather them to Sell or to feed Hogs, there Tythes shall be paid for them.

Neither

Neither ſhall Tythe-Hay be paid for the Graſs growing upon Head Lands, which are only large enough for the turning the Plow. *Headlands.* Rolls 1. 646. Z. 19.

But Tythe ſhall be paid of the Hay and Corn growing in Orchards, though the Tythe of the Fruit growing in them were paid the ſame year, be it Apples, Pears, Cherries, *&c.* 2 Inſt. 652. *Orchards.*

There hath been ſome queſtion about Fodder gotten in the Fenn Lands in *Cambridgeſhire* and elſewhere, and ſpent upon Beaſts of the Plow and Pail, whether it ſhould pay Tythes or no; but it hath been reſolved, That Tythes ſhall as well be paid of this Fodder, as of other Hay ſpent upon the Beaſts of the Plow and Pail. More 683. Cro. Jac. 47. *Fodder.*

But it has been reſolved, That for Graſs cut in Meadows to feed the Beaſts of the Plow, and not made into Hay, Tythes ſhould not be paid thereof. *Graſs cut in Meadows for Beaſts of the Plow.* Wells verſus Crawly, T. 1. Car. 1. B. R.

It hath been reſolved, That Tares, Vetches, *&c.* cut green for the feeding Beaſts of the Plow, by cuſtom may be freed from the payment of Tythes, but not without cuſtom. *Tares, Vetches cut green.* Cro. Car. 393. Jones 375. 2 Leonard 27.

There was a Canon made by *Robert Winchelſea* Archbiſhop of *Canterbury* and his Clergy, in the year 1305. whereby it was decreed, that *Omnes & ſinguli parochiani integre & ſine diminutione decimas inferius annotatas Eccleſiis ſuis perſolvant; ſcilicet, decimam lactis a primo tempore ſuæ novationis tam menſe Auguſti quam aliis menſibus; de proventibus etiam boſcorum pannagiis* Ca. Sancta Eccleſia.

giis Sylvarum & cæterarum arborum si vendantur, vivariorum, piscatiorum, fluminum, stagnorum, arborum, pecorum, columbarum, seminum, fructuum & bestiarum guarenarum, aucupitii, hortorum, curtilagiorum, lanæ, lini, vini & grani, turbarum, in locis quibus fabricantur & fodiuntur, cygnorum, caponum, aucarum, & anatum, ovorum, Thenetii agrorum, apum, mellis & ceræ, molendinorum, venationum, artificiorum, negotiationum, nec non agnorum, vitulorum, pullorum, equorum secundum eorum valorem, & omnium proventuum rerum aliarum de cætero satisfaciant competenter Ecclesiis quibus tenentur, nullis expensis ratione præstationis decimarum deductis, seu retentis, nisi tantum de præstatione decimarum, & negotiationum; Quod si monitionibus suis parere contempserint, per suspensionis, excommunicationis, & interdicti sententias eos ad præstationem decimarum hujusmodi compellant.

This Canon being a Provincial Canon of this Nation, and by consequence in force so far, as it is not croſt by the Common Law, Statute Law or Custom of the place, I thought fit to insert, though almost all the particulars therein are spoken to in their proper places, save that I have not met with *decima vivariorum* in any other Canon, which the Gloss says, is *loca in quibus pisces pascuntur, & impinguuntur*, and sometime it is taken * *pro loco ubi feræ includuntur*, with which Sir *Robert Stapleton*'s Journal partly agrees; but what Tythes are to be paid

Verbo *Vivariorum.*

* Sir *Henry Spelmans* Gloss verbo *Vivarium.*

paid for *Vivaries*, neither the Canon nor Gloſs tells us, and I as little can give you an account what Tythes are due for Curtilage. *Theneſii agrorum* Mr. *Lindwood* tells us is, *Arborum creſcentium circa agros pro clauſura eorum*, which by the Common Law of *England* are to pay no Tythe; for the reſt I refer to the proper Chapters.

CHAP. IV.

The fourth Chapter ſets forth where, and in what Caſes, and in what manner the Tythes of Wood are to be paid.

How and where Tythe wood is to be paid.

IN the time of *Stratford* Archbiſhop of *Canterbury*, in or about the 17th year of the Reign of *E.* 3. 1343. there was a Provincial Canon or Declaration made to this effect.

Canon. Lindwood c. Quamquam ex ſolventibus, &c.

Declaramus proviſione concilii ſylvam cæduam illam fore, quæ cujuſcunque exiſtens generis arborum in hoc habetur ut cædatur, & quæ etiam ſucciſa rurſus ex ſtirpibus aut radicibus renaſcatur; ac ex ea decimam utpote realem & prædialem parochialibus ſeu matricibus Eccleſiis perſolvendam, nec non Sylvarum poſſeſſores hujuſmodi ad præſtationem decimarum lignorum ipſorum exciſorum in eis ſicut fœni & bladorum omni cenſura Eccleſiaſtica fore Canonice compellandos.

But

Exact Abridgment, p. 40. nu. 51. & ibid. 80. num. 37.

But in or about the same year there was a Petition in Parliament, That no Man should be impleaded in a Court Christian for Tythes of the Woods or Under-Woods, but in places accustomed, which was answered; as heretofore the same shall be.

The like Petition was in the 25th year of *E.* 3. and other Parliaments, till at the length, in the 45th year of the same King, an Act of Parliament was made to this effect, reciting,

St. 45 El. 3. c. 3. *Tythes not to be paid of great Wood.*

That whereas they sell their great Wood of the Age of twenty years or of greater age to Merchants to their own profits, and in aid of the King in his Wars, Parsons and Vicars of Holy Church do implead and draw the said Merchants in Suit in the Spiritual Court for the Tythes of the said Wood, by the name of Silva cædua, *wherby they cannot sell their Woods to the very value, to the great damage of them and the Realm: It is therefore by that Law ordained and established, That a Prohibition in this case shall be granted, and upon the same an Attachment, as hath been used before this time.*

By which it appeareth that this Act of Parliament was but a Declaration of the Common Law, Prohibitions and Attachments thereupon in such case having been formerly used, and so was *Paston*'s Opinion, 9 *H.* 6.

9 H. 6. 56. a. T. 27 E. 1. ro. 28. a. *Prohibition in point.* 50 E. 3. 10. a.

This Act of Parliament was after questioned by the Clergy, pretending it did not pass as an Act of Parliament, but only as an Ordinance, and so not binding. And there-

thereupon the Commons in the next Parliament petitioned, That it might be enacted, that for Wood above twenty years growth, no Tythes ſhould be due, and that in all ſuch caſes a Prohibition might be granted. To which was anſwered, That ſuch Prohibition ſhould be granted as then before had been uſed. *Exact Abridg.* 118. nu. 21.

But Sir *Edward Coke* in his Commentary upon *Magna Charta*, does ſufficiently prove it was an Act of Parliament.

1. Becauſe it is entred upon the Parliament Roll amongſt other Acts of Parliament. 2. It is under the Title in that Roll of Statutes of *E.* 3. *Anno Regni ſui* 45. 3. It was proclaimed with the reſt of the Acts of that Parliament. 4. It is penn'd in the form of an Act of Parliament, *viz.* (*It is ordained and eſtabliſhed.*) 5. It hath the conſent of the Lords and Commons. 6. There hath been infinite Prohibitions upon it. To which let me add, That in the Parliament of 8 *R.* 2. it was owned for an Act of Parliament, in which Parliament 'tis like many of the perſons were preſent that were at the making of the ſaid Act. 2 Inſt. 643. 644. 8 R. 2. *Exact Abridgment of Record.* nu. 21.

And in 9 *H.* 6. Exception was taken to the Prohibition, becauſe it was not grounded upon this Statute. 9 H. 6. 56. a.

And in the 11 *H.* 4. It was affirmed by *Thirning* to be an Act of Parliament, and in force. 11 H. 4. 9. a.

But whoſoever deſires more ſatisfaction in this point, I refer them to Mr. *Selden*'s *Hiſtory of Tythes*, and the other places mentioned in the Margent. Seldens Hiſt. de decim. 236. 2 Inſt. 643. 644. Rolls 1. 637.

Notwithstanding this Act, many questions were started what was *Sylva cædua*, and many Petitions in Parliament to have it declared, to which I find no positive answers, but sometimes referred to usage, and sometimes the King took time to advise.

Sylva cædua quid.

50 E. 3. 10. b.

But *Belknap* a Learned Judge, 50 *E.* 3. declares, that *Sylva cædua* is to be intended of all manner of Wood that may be cut and will grow again; which all manner of Wood will do, as he there says, if it be preserved from Cattel; and therefore the Defendant in the Prohibition in that Case was put to Traverse, that he sued not in the Spiritual Court for the Tythes of gross Woods.

So that the question at this day chiefly is, What shall be said to be gross Woods, To which question

2 Inst. 643. *What shall be said great wood.*

Contra Rolls 1. 640. q. 5.

Plow. 470. a. b.

Contra Rolls 1. 640. q. 7.

Hob. 288.

Rolls 1. 640. q. 6, 7, 8.

Hob. 219.

Noy 30.

Cro. Jac. 199.

More 907.

The Judges of the Common Law have resolved, That all sort of Wood that is usually imployed for the Building of Houses, Mills, *&c.* are gross Woods, and within this Statute: Of which sort there are Oak, Ash, Elm, Beech, Horse-Beech and Horn-Bean, against the Opinion in *Moiyn*'s Case: Asp is likewise esteemed a gross Wood, being sometimes used for Timber; but for Willows, Hazels, Hollies, Maples, Birch, Alders, Thorns, *&c.* of what Age or bigness soever they be, they are regularly to pay Tythes.

That Birch is in some places taken for Great Wood and not Tythable.

But

But if they be cut for fencing of Grounds, or for Fewel to be ſpent in the Houſes of the Owner within the ſame Pariſh, no Tythes ſhall be paid of them. Cro. El. 499. 609. Lit. Rep. 241. Rolls 2. 298. o. 1. 2 Inſt. 652.

Cro. Car. 113.. More 683.. Rolls 1. 644. z. 1, 2, 3. Hetley 88. 110.

Of what wood Tythes ſhall be paid.

But if by Cuſtom Tythes have been paid of ſuch Wood, the Cuſtom is to be obſerved. Rolls. 1. 645. z. 8, 9.

So if a Man cut Wood for the burning of Bricks, which are imployed for the repair of Houſes and Buildings of the Owner within the ſame Pariſh, no Tythes ſhall be paid for it; but if he make Bricks to ſell, or for making of Houſes of Pleaſure, or other than for neceſſary Habitation, he ſhall pay Tythe for the Wood ſpent therein, if tythable. *Burning Bricks.* Rolls 1. 645. z. 10.

If a Man convert his Land into a Nurſery for Fruit-Trees or other Trees, and ſell them for profit to ſuch as tranſplant them into other Pariſhes, he ſhall pay Tythes of them. *Nurſeries.* Rolls 1. 637. c. 6. Cro. Car. 525. Jones 416.

And if the Owner digs them up and ſells them, then he ſhall pay Tythe; but if he ſell them ſtanding and the Vendee digs them up, then he ſhall pay the Tythe. Hardres 38.

If a Man cut his Copice-Wood, and pay Tythe of them, and ſoon after grub up the Roots to cleanſe the Ground, he ſhall not pay Tythes of them. *Grubbed wood.* Rolls 1. 637. c. 7.

Upon the whole matter it is left a little uncertain which ſhall be accounted groſs Wood; becauſe in ſome Countries almoſt

the meaneſt ſort of Wood is uſed for Building, and the Judgments in our Books vary, ſome allowing one thing for Timber, which another contradicts; but the proper and undeniable Wood for Timber are Elm, Aſh and Oak, which are uſed for Timber in all Countries and places. It reſts now to ſhew in what Caſes ſuch Woods as are accounted groſs Wood ſhall pay Tythes.

If Oak, Aſh, Elm, *&c.* which are eſteemed Timber in the Countries where they grow, be cut under one and twenty years growth, they are accounted *Sylva cædua*, and ought to pay Tythe.

Loppings of Trees.
2 Inſt. 643.
Cro. Jac. 100.
More 762. 908.
Plowd. 470. b.
Rolls 1. 640. q. 1, 3, 4.
Co. 11. 48. b. 49. a.

But the Loppings of great Oaks, Aſhes, *&c.* though the Lops be under twenty years growth, ſhall not pay Tythes; for they are priviledged by the Bodies, neither ſhall Tythes be paid of the Shoots and Under-Wood, which grows from the Roots and Stocks of ſuch Timber-Trees, and Trees above the growth of twenty years, which have been felled.

Bark.
2 Inſt. 643.
Co. 11. 49. a.

Nor ſhall Tythes be paid of the Bark of ſuch Trees as are Timber-trees, and priviledged from the payment of Tythes.

But Tythes ſhall be paid of the Maſt, Acorns, *&c.* of Timber-trees, becauſe the ſame is of annual increaſe.

2 Inſt. 643.
Dotards.
2 Inſt. 643.
Cro. El. 477.
Rolls 1. 640. q 2.

Neither ſhall Tythes be paid of Timber-trees, which become dotard, and are become *arida, ſicca, & non portans folia in æſtate nec exiſtens maheremium.*

If

If one lop Oaks, Aſhes, *&c.* under twenty years of age, and after let them grow above twenty years of age, no Tythes ſhall be paid of them or their Lops. More 908. Co. 11. 49. a. Rolls 1. 640. q. 1.

It hath been held, That if a Wood-ground be mixt with Woods tythable, and Woods not tythable, and the greater part be ſuch as are not tythable, it ſhall priviledge the reſt, and pay no Tythe; but if the greater part be tythable, it ſhall pay the Tythe of ſuch part as is tythable; for where the greater part is great Wood, the whole ſhall be called grand Wood *a majore*. *Wood mixt with great and underwoods.* *Parſons Law*, 99. T. 19 Jac. B. R. Buckhurſt verſ. Newman. *Parſon of* Staplehurſt. T. 36 El. B. R. per *Hendin.*

It hath been a queſtion amongſt the Canoniſts, who ſhall pay the Tythes of Wood tythable, the Buyer or the Seller. Mr. *Lindwood* in his Gloſs upon the Canon before recited, ſeems to be of Opinion, that the Buyer ſhall pay the Tythes, *Quia verum enim eſt quod decima ſequitur fructus, & cum onere decimæ transferuntur fructus in alterum*; and this Opinion of his ſeems reaſonable, where the Owner of the Wood ſells the whole Wood together, or parcels it out, and the Buyers cut it; but if the Owner of the Wood cut it himſelf, and then ſells it by parcels, there it ſeems reaſonable, that the Owner of the Wood ſhould pay the Tythe; but by the Common Law the Parſon may ſue the one or the other at his Election. *Who ſhall pay the Tythe of Wood.* Lindwood c. *Quamquam exſolventibus & verb. Sylvarum poſ. & cap. Quia quidam maledictionis verb. aſportam.* Rolls 1. 656. l. 1.

And it is to be obſerved, That a whole Province, County or Hundred may preſcribe in *non decimando* of Woods, as in the Wilds of *Kent* and *Suſſex*, and other Rolls 1. 637. f. *Preſcription of not tything of Wood.*

places, and therefore the Commons in 17 *E.* 3. upon the making of the aforesaid Canon moved in Parliament, That no Man should be drawn in Plea in the Court Christian for the Tythes of Wood or Under-wood, except in such places where such Tythes have been used to be paid; for by the strict Letter of this Canon, Tythes were to have been paid of all manner of Wood, great and small, in all places; to which the Answer is recorded, *Let it be done in this also, as hath been done before time.*

Rolls 1. 637.

The manner of paying Tythe Wood.

The manner of the payment of Tythe-wood must either be by the measure of the Ground by Poles, Perches, *&c.* as 'tis in some parts of *Lincolnshire*, or every tenth Faggot, Billet, *&c.* as 'tis paid of Corn and other things, but in this, as in all other Cases, the Custom of the place is to be observed.

White versus Aarch, M. 15 Jac. C. B.

But no Tythe shall be paid of Wood cut for Hop-poles to be used in the same Parish, where the Parson hath the Tythe of the Hops.

CHAP.

CHAP. V.

The fifth Chapter ſhews where, and in what Caſes Tythe is due for the Herbage or Agiſtment and Paſturage of Cattel, and who is to pay the ſame.

I Am now come to ſpeak of the Tythe of Herbage, Agiſtment or Depaſturing of Cattle, for which I find no Canon, ſave a Clauſe of a Provincial Canon of *Robert Winchelſey*, dated 1305. in theſe Words: *In what Caſes Tythe Herbage is due.*

De paſturis autem & paſcuis tam non communibus quam communibus ſtatuimus, quod decimæ fideliter perſolvantur, & hoc per numerum animalium & dierum, ut expedit Eccleſiæ. *The Canon.* Lindwood c. *Quoniam propter.*

The Tythe of the Herbage or Agiſtment of Cattel is due, where the Owner or Farmer of any Lands, depaſtures the ſame with barren Cattel that yield no profit at all to the Parſon; which is a tenth part of the yearly value of the Ground ſo eaten, but commonly a twentieth part is accepted; but in this, as in all other Tythes, the Cuſtom and Uſage of the place is to be obſerved. Hardres 184. Cro. Car. 237. 559. Jones 254.

If the Owner of the Land agiſt it with Foreigners Cattel, then the Owner of the Land ſhall pay the Herbage Tythe; but if *Who ſhall pay it.* Cro. El. 365. 2 Inſt. 651.

Cro. Car. 237. 559. Hetley 93. Rolls 1. 641. 2. 9, 10. Rolls 1. 641. ro. 4.

he let the Ground to a Tenant, then the Tenant is to pay it. *Vide Hardres* 184.

But no Herbage Tythe shall be paid for the Agistment of Beasts bred for the Plow and Pail, and so employed in the same Parish; nor for Beasts fed and spent in the Owner's House in the same Parish. *Vide Hardres* 184.

Bulst. 1. 171. Poph. 126. 142 Wild versus Lampton, T. 15. Jac. B. R. per 3 Inst. versus Houghton. *Saddle Horses.* Rolls 1. 641. c. 4, 5.

So if a Man eat a Ground with his own Saddle Horses, he shall pay no Tythe for the same; but if an Inn-Keeper eat up a Ground with Guest Horses, he shall pay Tythes for the Herbage of them.

Beasts bred for the Plow and Pail.

If a Forreigner that lives in another Parish depastures a Ground with Cattel bred for the Plow and Pail to be employed in a Forreign Parish, he shall pay Tythe for the Agistment of such Cattel.

And there is no difference between the Case of a Parishioner and a Forreigner, where the ground is eaten with unprofitable Cattel, and not bred for the Plow and Pail, *&c.* Saddle Horses and fatting Cattel, as aforesaid, to be spent in the Parishioners House; but that the Parishioner as well as the Stranger shall pay Tythe: But for the breeding of Cattel for the Plow and Pail, *&c.* conduces to the profit of the Parson in his other Tythes, and therefore no Herbage ought to be paid for the Agistment of them.

2 Inst. 651. *Herbage of Beasts* feræ naturæ, F.N.B. 53. g.

No Tythe is due to the Parson for the Herbage of Beasts *feræ naturæ*, as Deer, Conies, *&c.* without a special custom.

Fitz-

Fitzherbert in his *Natura Brevium*, ſeems to be of Opinion, That there is no Tythe due for the Herbage or Agiſtment of Cattel, and adds this reaſon, becauſe they pay Tythe of the Cattel there depaſtured, which proves his meaning to be, that there is no Tythe Herbage due where the ground is depaſtured with profitable Cattel.

Where an Inn-Keeper eats a ground with Gueſt Horſes, he ſhall pay for the Herbage of the Ground. Hardres 35.

If a Ground be eaten with profitable Cattel, as Milch Cows, Ews, Lambs and Cattel bred for Plow and Pail, *&c.* and alſo with barren and unprofitable Cattel, and the profitable Cattle exceed in number, it ſhould ſeem the greater part being profitable, ſhould free the reſt, *tamen inde quære.* *Paſture eaten with mixt Cattel.* Rolls 1 641. q. 20. Quære.

No Tythe Herbage is to be paid of the Agiſtment of Oxen, Horſes or Beaſts of the Plow, imployed and uſed in the ſame Pariſh, for they are profitable Cattel to the Parſon. If a Ground be eaten with barren and unprofitable Cattel and profitable Cattel together, and the profitable Cattel are the leſs in number, I conceive there is no doubt but the Landlord muſt pay Tythe in kind for the profitable Cattel, and Tythe of the Herbage for the reſt, and not Herbage for the whole. Rolls 1. 646. a. 6, 7. *Beaſts of the Plow.* *Ground eaten with mixt Cattel.*

If there be a cuſtom in the Country to ſow Tares, Vetches, *&c.* and to eat them green upon the ground before they are ripe, with Horſes and Beaſts of the Plow, no Tythe ſhall be paid for the ſame. *Tares and Vetches eaten green.* Rolls 1. 646. a. 6, 7.

If

Rolls 1. 647. a. 8 & 16. *Of what Cattel Herbage is due.*

If a Stranger or Parishioner buy barren Cattel, and depasture and feed them for Sale, he shall pay Tythe for the Herbage of them.

Rolls 1. 646. a. 13.

If a Man buy Oxen, Steers or Horses, and depastures, and after sells them, and doth not without fraud, imploy them in the Plow, he shall pay Tythes for their Agistment: And if he work them fraudulently, to defeat the Parson of his Tythes, it will not serve his turn.

Rolls 1. 647. a. 15.

So if a Man buys or rears young Cattel, and depastures them in a Parish, and does not imploy them there for a Plow or Pail without fraud, as hath been said, he shall pay Tythe for the Herbage of them.

P. 7. Jac. C. B. Parsons Law.

But for the Grass of Fallows no Herbage shall be paid, because it is for the bettering of the Parsons Tythes in the year following; nor for the Grass of Stubble.

CHAP.

CHAP. VI.

The ſixth Chapter ſhews where, and in what manner the Tythes of Calves, Milk, Cheeſe, Wooll, Lambs, Piggs, &c. are payable.

IN the payment of theſe ſort of Tythes, I do not obſerve that the Common Law croſſes the Canon in any thing material, and therefore I ſhall recite you the Provincial Canon made by *Robert Winchelſey*, and his Clergy, *Anno Dom.* 1305. which is to this effect:

How the Tythes of Calves, Milk, Wooll, Lambs, &c. are to be paid. It is doubted whether this Canon were made by him, or not. *See* Lindwood *in the Gloſſ.*

De nutrimentis autem animalium, ſcilicet de agnis ſtatutimus, quod pro ſex agnis & infra ſex oboli dentur pro decima; ſi ſeptem ſint agni in numero, ſeptimus agnus detur pro decima Rectori: ita tamen quod Rector Eccleſiæ qui ſeptimum Agnum recipit, tres obolos in recompenſationem ſolvat parochiano a quo decimam recipit: Qui octavum recipit, det denarium: Qui vero nonum, det obolum parochiano, vel expectet Rector uſque ad alium annum, donec plenarie decimum agnum poſſit recipere ſi maluerit; & qui ita expectat ſemper exigat ſecundum Agnum meliorem vel tertium ad minus de Agnis ſecundi Anni, & hoc pro expectatione primi anni. Et ita intelligendum

The Canon. Lindwood c. *Quoniam propter.*

telligendum eſt de decima lanæ: Sed ſi oves alibi in Hyeme & alibi in Æſtate nutriantur, dividenda eſt decima; ſimiliter ſi quis medio tempore emerit vel vendiderit oves, & certum ſit a qua Parochia illæ oves venerint, earundem dividenda eſt decima ſicut de re quæ ſequitur duo domicilia: Si autem incertum fuerit, habeat illa Eccleſia totam decimam, infra cujus limites tempore tonſionis inveniuntur: De lacte vero volumus quod decima ſolvatur dum durat, videlicet de caſeo tempore ſuo, & de lacte Autumno & Hyeme, niſi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decimæ & commodum Eccleſiæ.

How wooll and Lamb is to be paid.

By this Canon the payment of the Tythes of Wooll and Lambs is ſetled in this manner, That if the Pariſhioner have under ſeven Lambs or Fleeces, he ſhall pay a half peny for every Lamb and Fleece; and if there be ſeven Lambs or Fleeces, and under ten, then the Parſon or, *&c.* is to allow a half peny for every one that is wanting; but where this Canon gives the Rector election to take Tythe in this manner, or let them run on till a Lamb or Fleece be due in the inſuing year, that is not allowed by our Law, for Tythes muſt be paid annually; where Sheep are kept in one Pariſh in Summer, and another in Winter, the Tythes are to be divided: So if one buy in Sheep out of another Pariſh, the Tythe is to be divided, *i. e.* to each Rector, *&c.* his

Latch 254. P. 14 El. Harpurs Rep. Rolls 2. 308. v. 21.

And this agrees with the Levitical Law.

Decimam partem ſeperabis de cunctis fructibus quæ naſcuntur in terra per annos ſingulos, &c. Deut. c. 14. v. 22. & 23.

his proportion for the time they were reſpectively kept in the reſpective Pariſhes; but if it be not known from whence Sheep ſo bought in came, then the whole Tythe is to be paid where the Lambs fall and the Sheep are ſhorn.

By the Canon the Tythe of Milk is to be paid in Cheeſe whilſt the Pariſhioner makes Cheeſe; but in Autumn and Winter it is to be paid in kind: But this part of the Canon is generally over-ruled by the cuſtom of the place; for in many places they pay the Milk in kind all the year; in ſome places they pay only Cheeſe, and in ſome neither Cheeſe nor Milk, but ſome ſmall rate for it; And in ſome Countries they preſcribe to pay no Tythe of their Milk at all; and the cuſtom of the place in this, as in all other Tything, is to be obſerved, notwithſtanding the Canon: But for the better explanation of the meaning of this Canon, there was a ſecond Canon made, but the date thereof I cannot attain to; the tenor whereof follows:

Lindwood c. *Quoniam audivimus.* *Canon where Sheep, &c. ſhift their Paſture from one Pariſh to another.*

Quoniam, ut audivimus, ſuper decimis & nutrimentis animalium inter Eccleſiarum Rectores propter amotiones pecorum ad diverſarum parochiarum paſturas diverſis anni temporibus contentiones multimodæ oriuntur: Nos viam pacis præparare volentes ſtatuendo definimus & definiendo ſtatuimus, quod ad Eccleſias in quarum Parochiis oves a tempore tonſionis uſque ad feſtum Sancti Martini *in hyeme continue paſcuntur & cubant, Decima lanæ, lactis*

lactis & caſei ejuſdem temporis, licet poſtea amotæ fuerint ab illa Parochia & alibi tondeantur, integre perſolvatur; & ne fraus fiat in caſu prædicto, præcipimus, quod antequam oves amoveantur a paſturis vel etiam diſtrahantur, Eccleſiarum Rectoribus ſufficienter de ſolvenda decima caveatur. Quod ſi infra prædictum tempus ad diverſarum parochiarum paſturam transferantur, quælibet Eccleſia pro rata temporis portione decimam recipiet earundem minori triginta dierum ſpatio in rata temporis minime computando. Si vero per totum tempus prædictum cubant in una parochia & paſcantur continue in alia, inter ipſas Eccleſias decima dividatur. Quod ſi poſt Feſtum Sancti Martini *ducantur ad paſcua aliena, & uſque ad tempus tonſionis in una vel diverſis parochiis ſive in propriis paſturis dominorum ſuorum ſive alterius cujuſcunque paſcantur, habita ratione ad numerum ovium paſcua æſtimentur & ſecundum æſtimationem paſcuorum ab eorum dominis exigantur decimæ: Decima vero lactis & caſei de vaccis & capris proveniens ubi cubant & paſcuntur, ibi ſolvatur. Alioquin ſi cubant in una parochia & paſcuntur in alia parochia, decima inter Rectores dividatur omnino. Agni vero, vituli, pulli Equini & alii fœtus decimales habita ratione ad loca diverſa ubi gignuntur, oriuntur & nutriuntur, & ad moram quam traxerint in eiſdem, particulariter decimentur.*

Milk and Cheeſe.

Quid vero pro decima debeatur, ubi lac propter paucitatem vaccarum vel ovium ad caſeum faciendum non ſufficit; Et quid pro agnis, vitulis, pullis equinis, velleribus, aucis, aut aliis hujusmodi, de quibus propter eorum mo-

modicitatem decima certa dari non poteſt, conſuetudini locorum duximus relinquendum. Item præcipimus quod ſiquis poſt Feſtum Sancti Martini *oves occiderit, vel ſi oves quovis caſu fortuito moriantur; Decimam legitimam parochiali Eccleſia ſolvere non poſtponunt. Et ſi oves extraneæ in alicujus parochia tondeantur, Decima ibidem tradetur Rectori Eccleſiæ, niſi ſufficienter doceri poſſet quod pro decima alibi ſatisfactum ut ſolutionem ibidem faciendam modo legitimo valeat impedire.*

There may ſome queſtion be made upon the firſt Paragraph of this Canon, whether the Rector where the Sheep are kept from ſhearing till *Martlemas*, ſhould have the whole Tythe of the Sheep for the whole year? But Mr. *Lindwood* in his Gloſs conceives it is intended the whole Tythe that ariſeth during that time, which for Sheep will be nothing at all; but certainly it were very unreaſonable that the Rector of the Pariſh where Cattel are kept but for half the year, ſhould have the whole Tythes, and it cannot be intended to be any more than the proportion for the time they are ſo kept. *Verbo Intergre.*

But by this Canon, if Sheep be kept leſs than thirty days in any Pariſh, no rate is to be allowed the Rector of that Pariſh where they are kept ſo ſmall a time. *Sheep kept leſs than thirty days.*

If Sheep be bought in a little before Share-day, and it is not known that they anſwer the Tythes elſewhere, the whole is to be delivered to the Rector of the Pariſh where they are ſhorn.

Where

Where the Milk is so little that it will not make Cheese, or the Calves, Lambs, Fleeces, Colts, Geese, &c. are so few in number that there will none fall to the Parson, the Canon gives no Rule of tything in that Case, but refers it to the Custom of the place: But the Canonists generally hold, that Custom to pay less than a tenth part is not binding; for says *Lindwood*, *Quod laici minus solvant quam decimam non potest consuetudine introduci, quia esset contra jus divinum; plus tamen potest deberi ex consuetudine.* And concludes, *Quod autem hic loquitur de consuetudine locorum, intelligas de tali consuetudine quæ non excludit solutionem decimæ, sed de tali quæ limitat ipsius decimæ solutionem ad commodum Ecclesiæ, scilicet ad verum valorem vel amplius:* Herein I perceive the Canonists and Common Lawyers agree, that a Custom to be free from payment of any Tythe, or a Rate for it, is not good, except it extend to a whole Country, County, &c. and that where there is competent Livelyhood for the Minister beside; but the Common Law allows of Customs and Prescriptions, where Mony or some other thing is paid in lieu of Tythes, though not to the full value, as shall hereafter be made appear in its proper place.

Custom to pay less than the value of Tythe. Verb. consuet. oc.

By this Canon it is provided, That where Cows feed in one Parish, and lodge in another, that the Tythes shall be divided.

Poph. 197.

For the Tythes of Lambs, Calves, Colts, &c. the Tythe of them by this Canon

non is to be apportioned with reſpect to the places where they were engendred, brought forth and nouriſhed.

If a Mans Sheep dye or be killed after *Martlemas*, a proportionable Tythe muſt be paid for them.

The time when Calves, Lambs, Pigs, &c. are to be paid.

The time of the payment of the Lambs, Kids, Calves, Pigs, *&c.* is regulary when they are ſo old, that they may be weaned and live without the Dam, unleſs the Cuſtom of the place confine the payment to any certain time or age; and Wool is to be paid at Sheer-day.

Lindwood c. *Quoniam propter verb. lanæ.* *Several Mens Sheep depaſture together.*

If ſeveral Mens Sheep depaſture together in one Flock, or under one Shepherd, yet this ſhall not make them to be tythed together, but every Owner ſhall pay his Tythe of them by himſelf; but if the Head of a Family have his Flock mixt with his Childrens Sheep, which are under his tuition, and he takes the profit of them to his own uſe, in that caſe they ſhall be tythed together.

Cro. El. 363. T. *Wool Locks.* More 911. Rolls 1. 645. Z. 14, 15, 16. Bulſtr. l. 3. 242. *Neckings.*

It hath been reſolved that where Tythe Fleeces of Wool are paid, there ſhall be no Tythe paid of the Locks and Belts; but this ſeems to be intended of Locks caſually loſt.

There is a Cuſtom in ſome Countries to ſhear their Sheep about the Necks at *Michaelmas*, that the Wool may not in Winter be pulled off with Bryars, and for this ſort of Wool without Fraud, it hath been held that no Tythe ſhall be paid; and ſo of the birling of Sheep without Fraud, no Tythe is to be paid.

Rolls 1. 646. Z. 17.

Rolls 1. 646. z. 18. *Sheep dye of the Rot.* Latch 254.

If a Man's Sheep dye of the Rot or other Disease, or if the Owner kill or sell them as hath been said, he must pay Tithe for the Wool ratably.

Though the Canon direct one of seven to be paid only for Wool and Lambs, yet in most places the same order by Custom is observed for Calves, Colts, Pigs, Geese, *&c.* which Custom I presume took its rise beginning from this Canon.

Cap. Sancta Ecclesia verb. eorum valorem. Lindwood c. *Quoniam propter verbis de Caseo.*

By the Canon Law where there is no customary manner of Tything for the Tythe of Pigs, Geese, Calves, Colts, *&c.* where they fall short often, the tenth part of the Value is to be paid.

And note, That where Tythe Milk is paid in kind, there no Tythe Cheese is due, and so where Tythe Cheese is paid for so long, no Tythe Milk is to be paid.

Stat. 2 E. 6. c. 13.

Lastly note, That where any Person hath Cattel tythable going in a Ground or Common whereof the Parish is not known, the Tythe is to be paid in the Parish or place where the Party lives that owns the Cattel.

Lindwood *de decimis*, cap. *Quoniam audivimus.*

Where Sheep lodge in one Parish, and depasture in another, there the Tythes are likewise to be divided.

CHAP.

CHAP. VII.

The seventh Chapter shews where, and in what manner the Tythe of Seeds, Fruit, Mast, Bees, &c. is to be paid.

How the Tythe of Seed, Fruit, Mast, Bees, &c. is to be paid.

TYthes are to be paid of the Fruits arising in Orchards and Gardens in their proper kinds when gathered, unless there be some *modus* or rate Tythe paid in lieu thereof, and so of the Seed of Flax, Hemp, *&c.* is to be paid when drest up; but this must be understood where the Tythe of the Hemp and Flax is not paid till after the Seed is gathered; for if the Tythe be paid before the Seed threshed, ripled out or gathered, then no Tythe Seed is to be paid of the rest. The Tythe of Crabs, Mast, *&c.* is likewise to be paid when the same are gathered, or satisfaction is to be given if eaten with Swine on the ground. But in a Case reported by my Lord Keeper *Littleton*, it is held that no Tythes are to be paid for Acorns which fall from the Trees, and are eaten up by the Swine. *Ideo quære.* And the Tythe of Bees is to be paid by the tenth part of the Honey and Wax: The Canon is that

Lindwood c. Sancta Ecclesia
Rolls 1. 640. q. 10.
Co. 11. 49. a.
Cro. Car. 559.
Littl. Rep. 40.
Jones 447.
F.N.B. 51. g.
Rolls 1. 635. c. 1.

De Apibus, sicut de omnibus aliis bonis juste acquisitis quæ renovantur per annum statuimus, quod decimæ solvantur & exigantur debito modo. Cap. Quoniam propter.

Nota, That it was held in the Case of *Crouch* and *Risden*, that there can be no *modus* for Hops, because of late date; but they may be included in a *modus pro decimis minutis*. And *Twisden* said in this Case, that the Law was not setled in this Case, how the Tythe of Hops should be paid, by the Pole, Pound, or, *&c.*

Siderfin 443.

CHAP. VIII.

The eighth Chapter shews where and in what manner Tythes of Pidgeons, Conies, Fish, Deer, and other Beasts and Birds feræ naturæ, *are Tythable.*

Whether Tythe be due of Beasts or Birds feræ naturæ.

BY the Common Laws of *England* there is no Tythe due for Birds or Beasts that are *feræ naturæ*, and therefore it hath been resolved, That no Tythe shall be paid for Fish taken out of the Sea or River, unless by Custom, as in *Wales*, *Ireland*, *Yarmouth*, &c. neither for the same reason, is any Tythe due of Deer, Conies, *&c.* but if due by Custom it must be paid.

Cro. Car. 264. 339.
March. 87.
Hetley 13.
Rolls 1. 635. c. 4, 6, 7.
Noy 108.
St. 2 E. 6. c. 13.

And if a Man keep Pheasants, or other wild Fowl within limits, by clipping their Wings, yet no Tythes shall be paid of their Eggs or Young not being reclaimed, for as much as if their Wings were not cut, they would fly away.

Rolls 1. 635. c. 3.

Rolls 1. 636. c. 5.

But

But of young Pidgeons in Dovecoats or in Pidgeon-holes about a Mans Houſe, Tythe ſhall be paid if they be ſold; but if they be ſpent in the Family, no Tythe ſhall be paid for them. Hetley 147. Rolls 1. 644. z. 4, 5, 6. More 599.

It is ſaid in *Houghton* and *Princes* Caſe in *More*'s Reports, That no Tythes ſhall be paid of tame Turkies, Pheaſants or Partridges, nor their Eggs, *quia feræ naturæ*; but I believe the Book is miſprinted, for after they are reclaimed, they cannot be ſaid to be *feræ naturæ*.

CHAP. IX.

The ninth Chapter ſhews what Tythes are to be paid for Mills, and what kind and nature they be of, and of what things Tythes are not payable.

THE Canon is, *Cap. Quoniam propter De proventibus autem molendinorum volumus quod decimæ fideliter & integre ſolvantur.* *whether Tythes are to be paid of Mills, and how.*

And *Articuli Cleri*, *cap.* 5. is to this purpoſe.

Si quis in fundo ſuo molendinum erexit de novo, & poſtea a Rectore loci exigatur decima de eodem, exhibetur Regia prohibitio ſub hac forma. Quia de tali molendino hactenus non fuerunt ſolutæ, prohibemus, &c. *Et ſententiam excommunicationis, ſi quam hac occaſione*

promulgaveritis, revocetis omnino Responsio: In tali casu nunquam exivit Regia Prohibitio de Principis voluntate, qui & decernit talem perpetuum non exire.

2 Inst. 622. Littl. Rep.

It is made a question first, Whether any Tythes are due for Mills or not? which Sir *Edward Coke* in his second Institutes says, was never judicially determined that he knows of: And it was held in the Case of a Fulling-Mill no Tythe was due; for of profits that come only by the labour and industry of Man no Tythe is to be paid, and the same reason holds for Corn-Mills.

Cro. Car. 523. 524.

The next question is, admitting that Tythes are due for Mills, Whether the same be predial or personal?

Sir *Edward Coke* is of Opinion, That in case any Tythe be due, it is only a personal Tythe, being acquired by the labour and industry of the Miller, and takes no increase from the ground to make it predial: And the Statute of 2 *E.* 6. is, That every person shall justly set forth, yield and pay all predial Tythes in their proper kinds, as they arise and happen, which cannot be applyed to the Millers taking of the Toll-dish, nor to Fulling-Mills, Iron-Mills, Paper-Mills, *&c.* which are all comprehended under the word *Mill*, and no Tythe can be paid *in specie*; for if the Parson should have every tenth Toll-dish, then it would often happen, that he should have twice Tythe of the same Corn, which is against the Law; and such Tythe as the tenth Toll-dish has never been

been paid in any place that I have known or heard of.

And if it be a perſonal Tythe, as there is great reaſon that it can be no other, then it muſt be paid with the deduction of the expences and charges, and it is not payable but in ſuch places where perſonal Tythes are payable by Cuſtom; See more hereof in the twenty ſecond Chapter. Bulſtr. 3. 212.

But the Canoniſts hold, That the tenth Toll-diſh ſhall be paid as a predial Tythe, without deduction of expences; which doth not agree with the Common Law, and is therefore not binding. Cap. *Quoniam propter verbo integre.*

But in many places there is a rate Tythe paid for Mills, which is good by Cuſtom.

CHAP. X.

The tenth Chapter ſhews whether Tythes ought to be paid of Hawking, Hunting, Fiſhing, Fowling, &c.

THeſe are all comprehended under perſonal Tythe, for that theſe things being obtained by the labour and induſtry of the Party, and the things obtained are *feræ naturæ*, and not of their own nature tythable in their proper kind, unleſs the particular Cuſtom of the place require it, and therefore I ſhall refer theſe to the twenty ſeventh Chapter, where I ſhall ſpeak of perſonal Tythes. *Tythe of Hawking, Hunting, Fiſhing, Fowling, if due.*

CHAP. XI.

The eleventh Chapter is concerning the Tythes of Ducks, Geese, Hens, Swans, and other domestick Fowls and Birds.

Of the Tythes of domestick Birds and Fowl.

THE Tythe of all tame and domestick Fowl is to be paid in their Eggs or young in their proper kind, according to the Custom of the place: Geese, Ducks and Swans are usually paid in their kind, but of Hens and Turkies, commonly in Eggs, but therein the Custom of the place is to be observed. But note, That where they pay Tythe of the Eggs, there is no Tythe of the Young, nor *e converso* Tythe Eggs paid, where they have the Tythe of the Young.

CHAP. XII.

The twelfth Chapter shews of what things Tythes shall not be paid.

Of what things Tythes shall not be paid.
Co. 11. 16. a.. Hob. 11.·.

TYthes regularly are not due of Dwelling-Houses, and yet a *modus* may be due for a House as well as for Land; and it shall be intended, that it was a *modus* for the Land before the House was built.

No

No Tythes ſhall be paid for Hounds, Apes, Popinjayes, *& ſimilia*, becauſe they are things only of pleaſure. *Things of pleaſure.* 11 H. 8. 4. b. 2 Inſt. 651.

Neither ſhall any Tythes be paid of thoſe things which do not increaſe from year to year; and therefore no Tythes ſhall be paid for Stone got out of Quarries, Pit-coals, Turfs, Slates, Bricks, Quarrels, Tyles, Earthen Pots, nor of any thing made of Earth, nor of Marle or Lime got for the Improvement of the Ground; nor of Tin, Lead, Copper, or other Metal gotten out of the Ground, but by Cuſtom Tythes of ſuch things may be due and payable. *Things that increaſe not.* Rolls 1. 636. d. 1. Doct. & Stud. 174. More 908. Cro. El. 277. More 908. 2 Inſt. 651. Rolls 1. 637. c. 1. Doct. & Stud. 174. Baxter verſus Hope. H. 8 Jac. C. B. Rot. 1. 109.

Servants in Husbandry ſhall not pay perſonal Tythes, neither ſhall any Tythes be paid of Marriage Goods.

No Tythes ſhall be paid of Aftermaths, Stubbles, or Rakings of Corn without Fraud. St. 2 E. 6. c. 13. More 910. Rolls 1. 640. q. 12, 13, 16, 17.

No Tythes ſhall be paid of Birds or Beaſts that are *feræ naturæ*, &c. unleſs they be ſold. Lit. Rep. 311. More 909.

Tythes ſhall not be paid of Broom or Gorſe uſed for Fuel within the Pariſh.

CHAP.

CHAP. XIII.

The thirteenth Chapter shews what force Custom has, as well in the form and manner of Tything, as in the discharge of the payment thereof; and wherein Custom and Prescription differ.

St. 2 E. 6. c. 13. *what force Custom has in the manner of Tything.*

BY the Statute of 2 *E.* 6. it is enacted, *That every of the King's Subjects should from thenceforth truly and justly, without Fraud or Guile divide, set out, yield and pay all manner of their predial Tythes in their proper kinds, as they should arise and happen in such manner and form as had been of right yielded and paid within forty years next before the making of the said Act, or which of Right or of Custom ought to have been paid.*

In this Act there are three qualifications.

1. It injoyns the payment of such Tythes as had for forty years then past been of right yielded and paid.

2. Such as of right ought to have been paid.

3. Such as by Custom ought to have been paid.

Tythes due by Custom are of two kinds.

1. Where there is a *modus decimandi*, and by Custom Mony, or some other thing, is paid in lieu of Tythes.

And this is confirmed by the Stat. of 2 E. 6. cap. 13.

2. Where Tythe hath by Custom been paid of things not tythable, as of Lead in *Derbyshire*; Tynn in *Devonshire* and *Cornwal*;

wal; fishing in the Sea, as in *South-wales*, where the Custom is, That if the Parishioner of one Parish land his Fish in another, the Tythes are divided between the Parson of the Parish where the Fisher lives, and the other where he landed his Fish; but if the Parishioner land his Fish in the Parish where he himself dwells, then the Rector of that Parish has the whole Tythes.

Tyth-Ale. Rolls 1. 642.

And I have heard that in some Countries they pay Tythe-Ale, and Tythe of Limekilns, *&c.* which in their own natures are not tythable. Tythe Ale is said to be paid at *Market-raising* in *Lincolnshire.*

And as by Custom things may be made tythable, which in their own natures are not so; or one thing may by Custom be paid in satisfaction or discharge of another: So Custom hath a great influence upon the form and manner of Tything, for the direction of the time, place and order of payment of Tythes.

Custom of not Tything, where good.

And as Custom may make things tythable, which of their own nature are not tythable; so a Custom of a Province, County or Hundred may discharge the payment of Tythe of a thing which in its own nature is tythable, so there be a Competency for the Maintenance of the Ministry beside.

Hob. 266. Bulstr. 2. 245. Doct. & Stud. cap. ult.

And therefore in the Wilds of *Kent* and *Sussex* they do pretend by Custom to be free from the payment of Tythe Wood, or any thing in lieu of it; and so in several

Rolls 1. 642. b. 1. & p. 5, 6, 8. Co. 11. 16. a.

veral Countries they pay no Tythes of their Milk, *Dunton verſ. Moyle*, *Finch* 36 *Eliz.*

Cuſtom to pay Tythes of things not tythable.

And as Cuſtom may prevail in not Tything; ſo it may, as has been ſaid, make things tythable which in their own natures are not tythable, as the Rent of Houſes, Pigeons eaten in the Houſe, Wood ſpent in the Houſe: And by Cuſtom Tythe may be paid of Salt, Brick, Lime, Ale, Chickens and other things not tythable.

Rolls 1. 642. s. 7.

Difference between Cuſtom and Preſcription.

Now the difference between a Cuſtom and a Preſcription is this; every Cuſtom muſt have dimenſion, and alledged to be within ſome certain Province, County, City, Hundred, *&c.* for if it be a general Cuſtom of *England*, it is Common Law, and ſuch Cuſtom muſt be common to all within ſuch limits; but if it be confined to one certain Perſon, Houſe, Land or other thing, there it becomes a Preſcription which is a younger Daughter to Cuſtom; and therefore when a Man comes to plead a Cuſtom, the manner of pleading is to alledge that within ſuch a County, Hundred or Town, there is, and from the time whereof the Memory of Man is not to the contrary, there hath been ſuch a Cuſtom uſed and approved in the ſame, that is to ſay, that, *&c.* alledging the Cuſtom as it is.

How to plead a Preſcription.

But when you come to plead a Preſcription, you only alledge that you, and all thoſe whoſe Eſtate you have in ſuch Lands, have time out of mind paid ſo much annually to the Parſon of *D.* in full ſatisfaction and exoneration of all the Tythes ariſing upon the ſaid Lands, *&c.*

So

So that Custom and Prescription differ in these things, that Custom must be limited and confined to some certain place; Prescription is at large; Custom is common to all the Persons and Lands within the limits wherein it is alledged, but Prescription is confined to certain Persons or Things: But in this they agree, That they must be constant without interruption, and perpetual from the time whereof the Memory of Man is not to the contrary; for if there have been frequent interruptions, there can be no Custom or Prescription obtained; but after a Custom or Prescription is once duly obtained, a disturbance for ten or twenty years shall not destroy; for *Multiplex interruptio non tollit præscriptionem semel obtentam.*

Wherein Custom and Prescription differ.

1 Inst. 114. b.
2 Inst. 653.
2 Inst. 654.

But I must here observe to the Reader, that though the Civil and Ecclesiastical Laws do in some Cases take notice of Custom and Prescription; yet in this they differ from the Common Law, that they allow a usage for forty years to be a good proof of a Custom or Prescription, grounding their Judgments upon a decretal Epistle of Pope *Alexander* the Third, *Anno Dom.* 1180. But this Kingdom never allowed of that Epistle, or yielded any Obedience thereunto: So that as well in Spiritual as Temporal Prescriptions and Customs, if they come to be tried at Common Law, as all Prescriptions concerning Tythes must be, they must be proved to have been used beyond the Memory of any Man to the contrary; for if any Man living or any Authentick

How the Ecclesiastical Laws look upon Customs and Prescriptions.

In what they differ from the Common Law in this matter.

Authentick Record, or other evidence prove it was otherwise at any time since the first year of *Richard the First*, which was *Anno Dom.* 1189. the Custom or Prescription fails.

2 Inst. 653.

What influence Custom and Prescription have in the manner of tything.

And the influence Custom and Prescription have in the manner of tything, is confirmed by three several Acts of Parliament.

27 H. 8. c. 20.

First, *By the Statute of* 27 H. 8. *whereby it is enacted, That every Subject of* England, *&c. according to the Ecclesiastical Laws and Ordinances of the Church of* England, *and after the laudable Usages and Customs of the Parish, or other place where he dwelleth or occupieth, shall yield and pay his Tythes, Offerings, and other Duties of Holy Church*, &c.

By this Statute the Ecclesiastical Laws and Canons are affirmed for the payment of Tythes; but in such Cases as they are contrary to the Common Law or Customs of the place, they do not bind.

Next, this Act confirms and allows all Usages and Customs of the place where the Tythes arise, which are to be preferred before all Canons and Constitutions in manner of Tything.

32 H. 8. c. 7.

The next Statute is that of 32 *H.* 8. whereby it is enacted, *That every Person*, &c. *shall fully, truly, and effectually set out, yield to pay all and singular Tythes and Offerings aforesaid, according to the lawful Customs and Usages of the Parishes and places where such Tythes or Duties should grow, arise, come or be due.*

This Act seems only to extend to customary Tythes, and so doth the Statute of

2 E. 6. c. 13.

2 *E.* 6. which is,

That

That every of the Kings Subjects ſhould from thenceforth, truly and juſtly, without fraud or guile, divide, ſet out, yield and pay all manner of their predial Tythes in their proper kind as they ariſe and happen, in ſuch manner and form as hath been of right yielded and paid within forty years next before the making of the ſaid Act, or of Right or Cuſtom ought to have been paid.

But more of theſe Statutes in their proper place. I ſhall now proceed to ſhew what Liberty and Priviledge the Parſon, Vicar, *&c.* hath in the Grounds where the Tythes ariſe, for the drying, ordering and carrying away their Tythes.

CHAP. XIV.

The fourteenth Chapter ſhews what Priviledge and Liberty the Parſon, Vicar, &c. *hath in the Ground where the Tythes ariſe, for the drying, making, ordering and carrying away the ſame.*

BY the Statute of 2 *E.* 6. it is enacted, *That at the Tything time of predial Tythes, it ſhould be lawful for every party to whom any Tythes ought to be paid, or his Deputy, or Servant, to ſee the ſaid Tythes to be ſet forth and ſevered from the nine parts, and the ſame quietly to take and carry away.* 2 E. 6. cap. 13. *what Priviledge the Parſon,* &c. *hath in the Lands where the Tythes grow.*

This

This Statute, as to the taking and carrying away, seems only declarative of the Common Law: But as to coming upon the Lands to see the Tythes set forth, seems to me to be a new Authority given by this Law, for the Owners of the Land are *de jure* bound to set forth their Tythes duly and rightly; and if they fail therein, the Parson, Vicar, *&c.* have their remedies; and if the Parishioner do justly and truly set forth his Tythes, although the Parson, Vicar, *&c.* be not present, or had no notice given him to be present, yet this had been a good setting forth before this Statute: But it is a fair and just way to do it in the presence of the Parson, Vicar, *&c.* And note, this Act is warily penned in the singular number, that the party himself, his Agent or Servant may come to see the Tythes set forth, but must not come with a greater number.

Rolls 2. 302. q. 19.

And note, That the Parson, Vicar, Impropriator or Farmer cannot come himself, and set forth the Tythes without the Licence and Consent of the Owner of the Corn, Hay, *&c.* for if the Parson, Vicar, *&c.* shall of his own head tythe the Corn, Hay, *&c.* of any Land-holder within his Parish, *&c.* and carry it away, he is a Trespasser, and an Action will lie against him for it.

Jones 90.

But a Parson, Vicar, *&c.* may *de communi jure*, after the Tythes are set forth, come himself, or his Servants, and spread abroad, dry and stack his Corn, Hay, *&c.* in any covenient place or places upon the Ground where

Lindwood c. Quia quidem & cap. Erroris damnabilis.

where the ſame grew, till the ſame be ſufficiently weathered and fit to be carried into the Barn, &c. But the Parſon, Vicar, &c. muſt not take a longer time for the doing thereof than what is convenient and neceſſary; and what ſhall be ſaid a convenient and neceſſary time, the Law doth not, nor can define; for the quantity of Hay, Corn, &c. and the Weather in this caſe is to be conſidered; and what ſhall in this, and all other Caſes of like nature be ſaid a reaſonable and convenient time is to be determined by the Jury, if the point come in Iſſue triable by a Jury; but if it come to be determined upon a Demurrer, or other matter of Law, the Judges of the Court where the Cauſe depends are to reſolve the ſame. 12 E. 4. 6. a. Rolls 1. 643. x. 2.

And if the Parſon, Vicar, &c. ſhall exceed a convenient and neceſſary time in the drying, ordering and carrying away their Tythes; and the Pariſhioner ſhall receive damage thereby; an Action of the Caſe will lie againſt them for ſtheir negligence in this be half. Hughes Rep. 329.

But no Action will lie againſt the Parſon, Vicar, &c. in ſuch a caſe, unleſs the Pariſhioner have duly ſet forth his Tythe, and given notice thereof to the Parſon, Vicar, &c. Styles 342. Styles 348. Lampen verſ. Woodner, P. 1 Car. 1. B. R.

And the Parſon, Vicar, &c. may carry his Tythes from the Ground where they grew, either by the Common way, or any ſuch way as the Owner of the Land uſeth to carry away his nine parts. per Latch. Halſey verſus Halſey, H. 6 Car. 1. B. R. Rolls 1. 643. x. 3.

But if the Owner of the Soil, after he has duly ſet forth his Tythes, will ſtop up the

ways, and not suffer the Parson, Vicar, &c. to carry away his Tythes, or to spread, dry and stack them upon the Land, this is no good setting forth of his Tythes without fraud, within the Statute of 2 E. 6. but that the Parson, Vicar, &c. or other Owner or Farmer, may have an Action upon the said Statute, and may recover the treble value; or may have an Action of the Case for such disturbance, as I conceive; or he may, if he will break open the Gate, Fence, &c. which hinders him, and carry away his Tythes; but in that he must be cautious that he commit no Riot, nor break any Gate, Rails, Lock, Hedges more than necessarily he must for his passage.

Bulstr. 1. 108.

And note, That the Parson, Vicar, &c. when he comes with his Carts, Teams or other Carriages to carry away his Tythes, must not suffer his Horses, Oxen, &c. to eat and depasture the Grass growing in the Grounds where the Tythes arise, much less the Corn there growing or cut; but if his Cattel (as cannot be avoided) do in their passage, against the Will of the Drivers, here and there snatch some of the Grass, &c. this is excusable.

Rolls 2. 284. f. 21.

And if the Parishioner duly set forth his Tythe of Hay or Corn, and will not permit the Parson, Vicar, &c. to make the Hay, or spread and dry the Corn, as he ought, it amounts to a subtraction of the Tythes, and the Parson may sue for the subtraction of such Tythes in the Spiritual Court, and no Prohibition lies in this Case.

CHAP.

CHAP. XV.

The fifteenth Chapter ſhews to what Charges the Glebe Lands belonging to a Rectory, and the Tythes are Subject.

SIR *Edward Coke* tells us, *Quod nullus pro decimis, quæ ſunt ſpirituales, de aliqua reparatione pontis, ſeu aliquibus oneribus temporalibus onerari debet.* 2 Inſt. 641. *what Charges Tythes and Church-Lands are ſubject to.*

That Tythes being Spiritual, were not ſubject to Temporal Charges at the Common Law.

And Sir *Edward Coke* is of Opinion, That at this day, if Tythes be in the Hands of Temporal Men, they are by reaſon of them contributary to Temporal Charges. 2 Inſt. 641.

And upon a doubt of Mr. Juſtice *Yelverton*, who was Juſtice of Aſſiſe in the Biſhoprick of *Durham*, as Sir *Nicholas Hide*, heretofore Chief Juſtice of the *Kings-Bench*, has reported, it was reſolved by all the Judges of *England*, That Tythes are at this day chargable with all charges impoſed by any Act of Parliament, wherein they are not excepted, as upon the Statute of 43 *Eliz.* to the poor, and to maimed Souldiers, Kings-Bench, Marſhalſey, Bridges, *&c.* But they are not ſubject to any Charges Temporal, at or by the Comon Law. P. 5 Car. 1. Styles 162. per Rolls.

Web versus Batcheler. T. 1675. B. R. per Hunt.

And so it was lately held by my Lord Chief Justice *Hales* and the Court of *Kings-Bench*, for Watch and Ward and repair of the High Ways: And this Case then vouched by the Chief Justice.

First-Fruits. See more of this matter and Tenths, 4 Inst. 120, 121. * *Cowel verbo Annates. How these differ from the First-Fruits under the Law.* Vide Tho. Aquinas, 20, 2æ, 786. Art. 4. Polyd. Virgil. *De inventione rerum*, l. 1. c. 2. p. 498.

But Tythes at this day are subject to pay First-Fruits or Annates, in Latin *Primitiæ*, which are the first Years profits of every Spiritual Benefice at a new Incumbents entry into his Living *; they were anciently exacted by the Pope of *Rome*, when he had small Revenues to support the publick charge of his place. And *Polydore Virgil* tells us, *Cæterum nullum inventum majores Romano Pontifici cumulavit opes quam annatum quas vocant.*

And *Polydore Virgil* tells us, that Pope *Boniface* the ninth first introduced them, though others ascribe them to *John* the two and twentieth. See *Platina* in the Life of *Boniface* the ninth.

But some are of an Opinion (and not without reason) that Annates were much ancienter then Pope *Boniface* the ninth, who entred upon the Papacy in the year 1389. and *John* the two and twentieth, not till the Year 1410. But it appears by our Parliament Rolls (which are infallible Evidence) that this payment had rought *England*, in the 25th year of the Reign of *E.* 3. which was in the year of our Lord, 1351. in which year there was a complaint made by the Commons in Parliament, That the Pope had reserved to his own Collation as well the Abbies and Priories, as also all other the great Be-

Benefices, whereof any Eccleſiaſtical or Religious perſons had the Patronage; and that he had lately reſerved all the Dignities in *England*, and the * Prevenders in Cathedral Churches, by which means the Pope had the Firſt-Fruits of all the ſaid Benefices. By this complaint it ſhould ſeem the Pope had yet got in but one Leg, that is, to have the Firſt-Fruits of thoſe Livings, to which he himſelf collated: A pretty piece of Simony.

* *Prebends*, I ſuppoſe.

In the 50th year of the ſame King, the Commons renew their complaint again, and amongſt many Grievances from the Court of *Rome* there complain'd of, one is, That the Popes Collector that year (a thing never before done) had taken the Firſt-Fruits of every Benefice, whereof he made proviſion or collation, whereas he was uſed to take Firſt-Fruits only of Benefices vacant in the Court of *Rome*.

Anno 1376. Rot. Parl. n. 100. & 6 H. 4. nu. 21. 6 R. 2. 50. 1 R. 2. nu. 66. 4 R. 2. nu 44.

And 9 *H.* 4. *Cap.* 8. not in the print, there is a Statute expreſly againſt payment of them upon the pain in the Statute of Proviſors, which is a Premunire.

And if *Walſingham* ſays true, *Summus Pontifex* (*Anno* 1316.) *reſervavit Cameræ ſuæ, primos fructus beneficiorum omnium in* Anglia, *per triennium vacantium.*

Hiſt. *walſ.* p. 84, 45.

So that it is apparent, that in ſome caſes Firſt-Fruits were paid long before *Boniface* the 9th, or *John* the 22th; but perhaps the Pope before them had not made it an univerſal payment.

These were often complained of, as a great oppression upon the Clergy, as *Henricus Hostiensis*, who lived in the time of Pope *Alexander* the 4th, witnesseth; but however upon the abolishing of the Popes Usurpations here in *England*, the poor Clergy were not acquit of this Exaction, but the same was by the Statute of 26 H. 8. setled upon the then King, and his Successors.

St. 26 H 8. c. 3.

The First-Fruits are not here in *England* rated at the full and utmost value of the Living they are to be paid for, but according to the valuation taken and made in the said 26th year of King *H.* 8. and now used in the First-Fruits-Office.

And these First-Fruits are by a Statute made 1 Eliz. *not to be paid all at once; but one quarter of them is to be paid at the end of six months from the time of the Induction, Collation,* &c. *another fourth part at the end of twelve months, another fourth part at the end of eighteen months, and the last quarter part thereof at the end of two years.*

1 El. cap. 4.

And by a Statute made 1 *Eliz.* all Vicarages not exceeding ten pounds, and all Parsonages not exceeding ten marks, according to the valuation in the First-Fruits Office, are discharged from the payment of First-Fruits.

1 El. cap. 4.

And if an Incumbent dye, or be legally removed out of his Living without fraud, then after such death or removal, the remaining half yearly payments of the First-Fruits, which were not become due,

due, are discharged by the said Statute of 1 *Eliz.*

And by that Statute the Dean and Canons of *Windsor* are discharged of the payment of First-Fruits.

St. 26 H. 8. c. 3. *when the First-Fruits are to be paid.*

And by the Statute made in the 26th year of *H.* 8. before-mentioned, It is Enacted, *That every Arch-bishop, Bishop, Dean, Prebendary, Arch-deacon, Parson, Vicar,* &c. *before he have any actual or real possession or medling with the profits of his Living (this must be between Institution, Collation and Induction) must pay or compound for, and give security for the payment of his First Fruits in the First-Fruits Office: And that an Obligation taken for the same should be of the force of a Statute of the Staple, and that if any such presume to enter into his Living before such payment or security given, or composition made, he is to forfeit double the value.*

But his Majesty and his Royal Predecessors have not been severe in this Case to take the penalty, but upon failure their Officers of the Exchequer have sent out Process to the Sheriff, to put the negligent Parsons, Vicars, *&c.* in mind of this duty, and upon coming in and paying the charge of the Process, and paying or giving security for the First-Fruits, they are discharged.

But the Parsons, Vicars, *&c.* must be careful to pay in their half yearly payments, as the same become due, and take up their Bonds, or else new Process will issue to the increase of their charge.

Why Vicarages are charged higher in the First-Fruit Office than Parsonages.

Perhaps some may be so curious that they will desire to know, why Vicarages not exceeding ten pounds should be freed of this charge, and Parsonages of ten marks should pay them: Now the reason of that was, that the Vicarages in time of Popery, and when the Valuation was taken, had a great income by voluntary Offerings, which falling to little or nothing upon the dissolution of Monasteries, this favour was afforded them in their First-Fruits.

Tenths.

The next charge Parsons and Vicars are subject to, are the Tenths, that is, a tenth part of the yearly value of all their Church Livings; this payment was first exacted from the Clergy by the Pope, about the twentieth year of *E.* 1. and a valuation was then made by his Authority, of all Church Livings, at which rate the Pope was answered his Tenths, but he never had any Tenths of such Land as was given to the Church after that time. These payments (as appears by our Histories) the Pope of *Rome* sometimes granted to the Kings of *England*, when the Kings pleased them, or rather when they feared their power; but upon the abolishing the Popes power, which was in the 25th year of *H.* 8. these Tenths were given to the King the year following by the aforesaid Statute of 26 *H.* 8. and to be paid at Christmas yearly, and the Bishop of the Dioceſs is to collect them, and they are to be paid according to the valuation taken the same year, and now in the First-Fruits Office,

It should seem these were imposed by Boniface *the 8th to maintain his wars in* Sicily. Extravag. com. l. 3. p. 269. 2 Inst. 628.

Stat. 25 H. 8.

St. 26 H. 8. c. 3.

Office, and are not paid that year the First-Fruits are paid, but are allowed out of them, because it is intended that the King has the whole years profit.

But immediately upon the Reformation many Clergy-Men scrupled and denied to pay these Tenths to the King, being a duty properly due to the Pope, and therefore the refusal or neglect to pay them to the King, being certified by the Bishop *that had the Collection of them, is made a cause of deprivation, not only of the Living for which they refused to pay their Tenths, but also of all their Spiritual Preferments.* St. 26 H. 8. c. 3.

But by the Statute of 2 *and* 3 E. 6. *that severity was moderated; so that now the refusal or neglect to pay them, and so certified by the Bishop, makes only that Living void, for which the Tenths shall be so refused.* But his Majesty and his Royal Predecessors have rarely put the severity of this Law in execution, but make out process in the Exchequer to compel the payment; however since the Penalty is so great, every Clergy-Man ought to be very careful to avoid the danger. St. 2 & 3 E. 6. cap. 20.

An Apparator came to a Parson newly inducted, and told him he must pay his Tenths to such a person, naming him, at such a day and place, four Miles off; and this was adjudged no good demand to make his Living void within the Statute, but such demand which will make a Living void within the Statute, must be positive by one that has power to demand and receive it. More 541. Dyer 116. p. 69. Cro. El. 244.

And

And note, That the Bishops Certificate is not peremptory; but may be traversed, and the party that demands the Tenths must be sufficiently Authorized. See *Cro. Eliz.* 80.

St. 27. H. 8. c. 8. *The remedy where the Successor pays Tenths due by his Predecessor.*

There is a Provision made by an Act of Parliament in the 27th year of H. 8. *for those Incumbents that shall be forced to pay the tenths due in the time of their Predecessors, that they may levy the same upon any goods they can find of their Predecessors upon the Church Living; and if they be not redeemed within twelve days after they shall be distrained, then then the same shall be praised by two or three indifferent persons to be sworn, and so many of them sold as will satisfie the arrear with cost; and if no such Goods can be found, then the Successor to take his remedy against his Predecessor, his Executors or Administrators, or others to whom his Goods shall come, by Bill in Chancery, or in Action of Debt at Common Law.*

Procurations.

There is another charge to which the Parsons, Vicars, *&c.* are subject for their Church Livings, which is called Procurations or Proxies; and these are duties due and payable to the Arch-Deacons at the time of their Visitations, which are not paid by any certain Rule, but by some ancient Taxation; for anciently the Religious Houses and Clergy-Men at their own charge entertained the Bishops and Arch-Deacons in their Visitations, but at length their attendants were so many, and their trains so great, that the Clergy and Religious Houses were horribly oppressed

Sir John Davies Rep. 1, 2, 3.

See more of this matter Lindw. cap. ut singula Ecclesiastica.

preſſed with entertaining of them; to avoid which, the Clergy and Religious Houſes came to this compoſition, every one to pay ſuch a proportion to their Viſitors to be freed from that great oppreſſion: and therefore the Canoniſts define them to be, *Exhibitio ſumptuum neceſſarorium facta Prælatis qui Diocæſes peragrando Eccleſias ſubjectas viſitant*, and this payment is continued to this day, not only of thoſe Livings which are ſtill enjoyed by the Clergy, but alſo of the Impropriations being ſaved by the Statute of 31 *H.* 8. and confirmed by the Statute of 34 *H.* 8. and remedy given for them with Coſts, both in the Spiritual Court and at Common Law.

That by a canon made by Steph. Langton *about* 1222. *the Arch-Deacons were to bring but ſeven Horſes in their trains, and to ſtay but one day, and to invite no body.*

31 H. 8. cap. 13.

And note, that if there be a Parſonage and a Vicarage endowed, there is but one of them to pay Procurations, but which of them muſt pay, is to be directed by Cuſtom or the indowment, if extant.

Cap. Quoniam autem verb. una tantum.

Note likewiſe, that Donatives are not to pay Procurations, becauſe they are not within the Viſitation of the Ordinary; and ſo for free Chappels, for the ſame reaſon.

And if there be a Parſonage which has a Chappel depending on it, that is, where both are in the Parſons Cure, no Procurations are to be paid for the Chappel.

Cap. Quamvis lex naturæ.

Synodals is another charge upon the Parſons, Vicars, *&c.* and is likewiſe paid to the Arch-Deacon, not by any certain Rule, but by ſome ancient Taxation; ſo that ſome pay more, and ſome leſs.

Synodals.

I must confess I cannot find how this payment first became due, but by the name it should seem to be a contribution to the Arch-Deacons charge in the Synods, they * being anciently elected by the Deacons themselves as their representative.

* St. Jerome *in his Epistle to* Evagrius, *says*, Diaconi elegant de se quem industrium noverint, & Archidiaconum vocant.

† But it should seem, that the Arch-Deacons claim these Synodals for their *Easter*-Visitation: and the Bishops have laid some claim to them, but as my Author conceives, without any just reason, the Arch-Deacon and his Officers performing the Labour, and undergoing the Charge.

† Dugdales *war* 126. b.

Since my first publishing of this Book, a learned and worthy Divine sent me a Book, written by a learned and ingenious person amongst other things concerning Synodals, whereby he expected I might receive some satisfaction concerning the Original and growth of them, at whose Candle I should thankfully have lighted mine own, if it had given a clear light: But when I came to read the Book, I found the Author indeavoured to prove them one and the same with the Cathedraical Duty, whose reasons to that purpose I can by no means subscribe to.

Cap. Quoniam autem verb. onera Ecclesiastica.

First, because Mr. *Lindwood*, a very learned Civilian and Canonist, reckoning up the *onera Ecclesiastica*, tell us, *Quædam enim sunt quæ dicuntur Episcopalia, & inter hæc continentur Synodaicum, Cathedraicum*, &c. so that it appears he conceived them two several and distinct charges.

Se-

Secondly, the *Cathedraicum* is by the Canons restrained not to exceed two shillings, whereas anciently the Bishops had a third part of the Offerings, and in consideration thereof were to repair the Churches they had this payment in consideration of the third part of the Offerings, and were acquitted of the repair of the Churches. But I could never learn that the *Cathedraicum* was ever paid in *England*, and the reason may be, because the Churches in *England* have always been repaired by the Parishioners by custom. Now the *Cathedraicum* being limited to two shillings, and finding upon inquiry, that the Synodals are not confined to any certain Sum, but for the most part more than two shillings; it is very improbable that they are one and the same.

Causa 10. q. 3. Quid vero & placuit ut nullus & Concil. Braca. cap. 2.

Thirdly, the *Cathedraicum* is annexed to the Bishops Chair, and in recompence of a duty not transferred to any other; but for ought I could ever learn the Synodals have been always paid to the Arch-Deacons; and therefore for these reasons I take them for several and distinct Duties, as *Lindwood* seems to take them.

The same Author gives an Account of some difference that has been moved between the Arch-Deacons and the Clergy, whether Procurations are due to the Arch-Deacons when the Bishop Visits: In which case the same Author has given his Verdict clearly for the Arch-Deacons, and grounded his Opinion upon Reason, Custom and Authority.

First,

First, his chief and only reason is, because the Arch-Deacon pays his Tenths as well for that year the Bishop visits, as for the other two; and therefore he concludes it very reasonable he should have that for which he pays Tenths.

But I conceive there is a great mistake in this Argument, for I am not satisfied the Arch-Deacons pay any Tenths for their Procurations, but for the Corps annext to their Arch-Deaconries and their Jurisdiction; for it were against reason to charge them to pay Tenths for that they eat and drink in their Visitations; and the Tenths ought to be of the clear profit; but where the Procurations are paid in Mony it should seem Tenths are due.

But admitting upon the valuation in the 26 *H.* 8. the procurations were valued (for in that of 20 *E.* 1. they could not be valued, not being then reduced into Mony, nor of long after) then the Argument runs no farther, than that, because the Arch-Deacon pays a Tenth part against reason, therefore the Clergy must pay the whole.

Vide extra. com. de decimis 296.

But the reason against the Arch-Deacons in my judgment is much stronger. I shall not take upon me to examine whether their Jurisdiction be ordinary or delegated: I will admit Custom has made it in some measure ordinary, though much might be said against it; I will let that point pass unquestioned, but from the beginning it was not so. But let that be as it will, it is clear there was no Juridiction annext

to

to Arch-Deaconries originally; the first step was over the Deacons, as shall be shewed hereafter: It is without all doubt, that Originally all Jurisdiction over the Clergy was in the Bishops, and they in their own persons visited the Churches within their Dioceses, for the first 600 Years after Christ.

But in the Fourth Council of *Toledo*, which was held about the 630*th* year after Christs Birth under *Honorius*. 1. It was decreed, *Episcopum per cunctas Diocæses Parochiasque suas per singulos annos ire oportet*; what to do? not only to eat and drink, but *ut exquirat quo unaquæque basilica in reparatione sui indigeat.* But *si ipse aut languore aut aliis occupationibus implicatus id explere nequiverit, Presbyteros probabiles aut Diacanos mittat, qui & reditus Basilicarum & reparationes & Ministrantium vitam inquirant.* 4 Concil. Toletan. cap. 35. 2 Concil. Braca. cap. 1.

This is the first Commission that I can find for Bishops to make Substitutes to inquire, but the Jurisdiction still reserved to the Bishop to admonish, examine and punish; but here is no news of Arch-Deacons as yet in power.

The first news I hear of any thing tending to any *Jurisdictionem* was over the Deacons; for *Gratian* tells us, *Archidiaconus, Subdiaconis & Levitis ad quem ista pertinet Ministeria. Et ad ipsum nunciat Episcopum excessus Diaconorum:* So that it seems the petit Jurisdiction the Arch-Deacons begun with, was to inspect the Behaviour Distinct. 25. per totis.

of

of their Brother Deacons, and to give the Bishop an account of their miscarriages in the nature of a Monitor only.

Distinct. 91. dictum est.

The next news I hear of them is a complaint against them, *Quod in plerisque locis ipsi super Presbyteros quandam exerceant dominationem:* but staid not there, but *ab eis censum exigunt*; (which the Bishops could not do) whereupon it is commanded, *quod sint contenti regularibus disciplinis, & teneant propriam mensuram quam ab Episcopis eis injungitur; hanc per parochias suas exercere studeant, nihil per cupiditatem & avaritiam præsumentes.* Here it appears that they had gained some imployment under the Bishop over some certain Parishes, but with a limited Jurisdiction; they must keep their Measures, must not exceed their Bounds.

Hob. 16.

By this it appears that the Arch-Deacons are meerly Substitutes to the Bishop, and what authority they have is derived from him, his chief Office being to visit and inquire, *& Episcopo nuntiare*; and therefore the Bishop takes what Causes he pleases to his own Cognizance, and leaves some petit business to the determination of the Arch-Deacon. This being granted, which cannot be justly denied, it is against all the reason in the World, that the Bishop by easing of himself by appointing a Deputy Vicar or Vicegerent should double the charge upon his Clergy.

Ergo dicuntur oculi Episcopi.

As for the Custom alledged for this Duty, before I give an Answer to it, it will

will be neceſſary to examine how the Canon Law ſtands in the point.

And by our own Provincial Canons I find it is eſpecially provided, that the Arch-Deacons ſhould receive no Procurations, *niſi illo die quo perſonaliter viſitant Eccleſiam procurantem*; and it goes farther, *nec redemptionem pro viſitatione præſumant.* What can be more clear? and what can this redemption mean, but Procurations in Mony as is now uſed? Cap. ut ſingula Eccleſiaſtica.

And the Gloſs, to make ſtill more clear, tells you, *forſan quia Epiſcopus eodem Anno viſitavit & ſuſpendebat Juriſdictionem Archidiaconi, & ſic Archidiaconus vult ab eis aliquid loco procurationis exigere quod non licet ut hic, ubi non viſitavit.* Verbo viſitatione.

And by another Canon made by *John Stratford* Archbiſhop of *Canterbury* and his Clergy, about the year 1345. it is forbidden, *Ne quis procurationem ratione viſitationis ſolvendam ab aliqua præſumat recipere Eccleſia, niſi viſitationis officium diligenter eidem impenderit, ſcrutatis perſonaliter, & inſpectis per ipſum cum effectu quæ fuerint indaganda. Vide* 4 *Concil. Later. ſub Innocent.* 3. *ca.* 33. to the ſame purpoſe. Cap. Quamvis lex naturæ.

By this Canon likewiſe there is no Procurations to be paid without perſonal Viſitation. But for the better underſtanding of this Canon I muſt obſerve to the Reader that there is two other ſorts of Procurations, the one by Pact or Covenant, the other by Cuſtom, that are no ways related to Viſitations, and therefore the Canon well diſtinguiſhes, *ratione viſitationis.* Ibidem verb. ratione viſitationis.

And after that Canon has taken care for moderating the exceſſive Charge of the Viſitors in their Viſitations, it leaves it to the choice of the viſited. *An in pecunia quantitates ſolitæ, vel in victualibus viſitantes eoſdem voluerint procurare, optionem reſervamus.*

Verb. Solet ſolvi.

And Mr. *Lindwood* tells us, in thoſe days it was a common uſe in *England*, that the Arch-Deacon received in Mony, *nomine procurationis* ſeven ſhillings and ſix pence, that is, eighteen pence for himſelf and his Horſe, and ſix ſhillings for his ſix Attendants and their Horſes.

There is by the ſame Canon proviſion made, that where there is a Church and a Chappel depending of it, which is not preſentable, but within the Charge and Cure of the Parſon, that in that Caſe there ſhall be but one Procuration for both, and that he that ſhall take more, ſhall *ipſo facto* be ſuſpended *ab officio & beneficio*, till he has paid double the Sum received to the Cathedral Church of that Dioceſs.

Laſtly, this Canon concludes with the Duty of the Arch-Deacon and other Ordinaries in their Viſitations, that *tam in Eccleſiis quam ornamentis eorum, cœmiteriorum clauſuris & manſorum domibus reperientes defectus, iis ſub pecuniariis pœnis præcipiunt reparare, &c.*

So it appears by theſe Canons, that there are no Procurations due to the Arch-Deacons, unleſs they viſit *perſonaliter*; and if it be demanded, why in perſon, and why

Eccle-

Eccleſiatim? the cloſe of this Canon tells you.

Now you ſhall hear what *Othobon*, the Popes Legate, in a National Synod held in St. *Pauls*, *London*, in *May* 1268. ſays to this matter, *Cum autem* (ſays he) *ratione viſitationis procuratio debeatur, ſi quid exequatur vel recipiatur hujuſmodi ratione ceſſante, jam male recepti & indebiti nomen ſubiit. Cum igitur intellexerimus quod plerique prælati procurationes a ſubditis exigunt, licet viſitationis Officium non impendant; nos tam Eccleſiarum indempnitati quam * prælatorum ſaluti conſultius providentes, diſtrictius inhibemus, ne quis eorum procurationem, quæ ratione viſitationis debetur, ab Eccleſia quacunque recipiat, niſi cum eidem viſitationis officium impendit; qui vero receperit, donec reſtituerit, ab ingreſſu Eccleſiæ ſit ſuſpenſus.*

See Cauſa 10. q. 1. Relata *to the ſame purpoſe.*

* Nota.

So that it appears by theſe Canons, the Arch-Deacon, when the Biſhop viſits, ought not to have Procurations, but is expreſly forbid to exact them. Now how far a Cuſtom ſhall prevail againſt a Canon (I mean ſuch Cuſtom as the Eccleſiſtical Courts allow of forty years cotinuance) belongs to the determination of the Caniniſts. And the Author tells us, *page* 25. from them, that that Cuſtom is ſaid to be *rationabilis*, and by conſequence *inviolabilis*, that is binding, *Quæ nec divino juri contradicit, nec obviat Canonicis inſtitutis.*

Concil. Later. 4. ſub Innocent. 3. Can. 33. *Accords.* Gregories *Decretals* cap. ad noſtram audientiam de conſuetudine cauſa 10. q. 1. —— relata.

I could ſay much more to this purpoſe, but it belongs to the Canoniſts, to whom I leave it.

But if the Author intend such Custom as is allowable at Common Law, when he says Canons cannot be of such force as to annihilate and overthrow National Laws and Customs, I must grant he is therein very right.

But in this Case there can be no such Custom; for every Custom allowable at the Common Law must have its Commencement before the first year of *R.* 1. which was *Anno Dom.* 1189. but the Decree of Pope *Benedict* XII. which first gave way to commuting Procurations into Mony *Volentibus*, was about the year 1337. and Mony payments in lieu thereof were not setled here in *England* of long time after; and therefore they cannot be claimed by any Custom or Prescription at Common Law.

Vas electionis Extravagan. li. 5. de censibus, &c.

For the Case of *Proxies* in *Ireland*, which he vouches forth of Sir *John Davies* Irish Reports, I conceive makes nothing at all to this question; for it is not at all moved in that Case, whether there were a double *proxie* due, the one to the Bishop when he visits, and another to the Arch-Deacon that sits still: But I presume the Author makes use of that Case to prove, that Procurations may be due *ratione visitationis*, when there is no Visitation; And I will agree they may by Act of Parliament; and in that Case, there is two Acts of Parliament for them.

Co. 4. But Sir *William Capels* Case, vouched in *Lutterels* Case, may be conceived to make something to this purpose, where the Case shortly

ſhortly is, That one held his Land *inter alia* by the Rent of Five ſhillings *pro wardo caſtri*, and upon Avowry for this Rent, the the Tenant pleaded that the Caſtle was down, and therefore no Rent due, and upon Demurrer adjudged againſt the Tenant; and very great reaſon, for the Rent was reſerved in reſpect of the Land, and not in reſpect of the Caſtle, for the reſervation of the Rent is *Reddendum inde*, that is, for the Land Five ſhillings *annuatim pro wardo caſtri*; and the ſaying the Caſtle is down does not anſwer the *Debet*: But if the Land for which the Duty ariſes be evicted by a more ancient Title, the Rent is gone; ſo that this Caſe being rightly underſtood makes againſt the Arch-Deacons rather than for them; for in their Caſe the annual payment is paid for Procurations. Procurations are due, *ratione viſitationis*; then when the Biſhop that has the ancienter right to viſit, inhibits his Deputy, and does the work himſelf, to whom does the wages belong?

Decret. Greg. li. 2. cap. 16. cum ex officii.

And note, That by the Canon Law no Man may preſcribe to be free from Procurations *ratione viſitationis*.

Here I could willingly end my Diſcourſe, for I doubt I have ſaid enough to dipleaſe ſome; but no good Man ought, nor I hope will take any offence at what has been ſaid, or at what I am about to ſay; and therefore I ſhall add a word or two concerning the Arch-Deacons and their Viſitations.

Concil. Tolecan. 4. cap. 35. & Braca. ca. 7.

It appears by what has been said, that for the first six hundred years after Christ, the Bishops in their own persons visited, *cunctas diocæses parochiasque suas singulos annos*, and they had seven Deacons in every City, that is, Dioceſs, to assist them. After that they had Authority in case of sickness, or other publick concerns, to delegate Priests or Deacons to assist them; and thereupon, as should seem, they cantonized their great Dioceſses into Arch-Deaconries, and gave them Commissions to visit and inquire, and to give them an account of all at the end of their Visitations, as is before related; and the Bishops reserved the third year to themselves to visit their Churches, and thereby to inform themselves how the Arch-Deacons, their Substitutes, performed their Duties, how they domineered over the Clergy, and were reduced to their true measures. You have heard after upon complaint of the oppression, they and others used in their Visitations by their excessive numbers of Attendants, in one of the Councils of *Lateran* the number of their Attendants were limited, and by Canons of our own several restrictions have been made against the exorbitances of Visitors.

Dist. 94. dictum est.

Cum Apostolus Sub Alex. 3. 1179. ca. 4.

Ut singula Ecclesiastica.

Cap. cum Apostolus.

By one Canon in the time of Archbishop *Langton*, they are commanded that in their Visitations their Attendants shall not exceed the number limited in the general Council of *Lateran* (whereby an Archbishop in his Visitation is allowed forty or fifty Men and Horses, a Bishop twenty or thirty,

Arch-

Arch-Deacons five or ſeven, an Arch-Prieſt two.) And further reſtrained the Viſitors, that they ſhould invite no Body to their Viſitation entertainments. 3 Council of *Lat.* 1176. ſub Alex. 3. cap. 4.

But this did not do the work intended in eaſing the Clergy; therefore after in the time of *Stratford* Archbiſhop, by the Canon before remembred it is farther provided, that if any *plures viſitare voluerit Eccleſias una die, procuratione unica in victualibus vel pecunia, ad quam omnes & ſingulas ſic die unico viſitatas proportionabiliter faciat contribuere; prout tradunt Canones, ſit contentus. Et ſi nocte præcedente viſitationem in quavis Eccleſia faciendam ad ſumptus Rectoris ſeu Vicarii viſitandi, ſeu die viſitationis in prandio ſteterit, cum eiſdem veram æſtimationem ſumptuum hujuſmodi in procuratione, ſi eam in pecunia viſitans licite duxerit exigendam, computare, ſeu allocare, vel pro ea in toto ſtudeat compenſare. Ita quod nec ultra ſumptus hujuſmodi ſolidam procurationem in pecunia, nec amplius quam deductis eiſdem ſumptibus de procuratione in pecunia exſolvenda ſupererit, præſumat recipere vel exigere quoviſmodo. Si quis autem aliter fecerit, donec indebite recepta reſtituerit, ab ingreſſu Eccleſiæ noverit ſe ſuſpenſum.* Quamvis lex naturæ.

And likewiſe by the before mentioned Decree of *Othobon* it is ordered, that Biſhops and other inferiour Officers in their Viſitations, *in ſuperflua comitiva ſeu evictionum numero, vel alias in expenſis gravare ſubditos non præſumant ultra quantitatem & numerum determinatum in conſtitutione* Innocentii *Papæ quarti, ne*, &c. Naturalis diſpoſitionis.

Vas Electionis ubi supra. Extravag. l. 5. de censibus.

But Pope *Benedict* the XII. good Man, made an Edict or Constitution decretal, whereby he setled what every Clergy-man, *&c.* should pay by way of Commutation in lieu of their Procurations, and this was about the year 1337. But the good Pope left in the Election of the visited, whether they would pay their Procurations in Mony or Victuals; but it was long after, as should seem, before this Decree was generally received in *England*; (which makes me believe the Arch-Deacons were more moderate here than elsewhere.) For when *Lindwood* published his Provincial Canons, which was about the year 1423. it was not generally received in *England*; which was almost an hundred years after. But the certain time that Procurations here in *England* were turned into Rent I cannot find out: But the effect of this innovation was, that when Procurations were reduced to an annual Rent, the Visitations were degenerated into an *Audit* of Receipts, and called a Visitation where the Parson draws up a thing called a Presentment containing (*omnia bene*) which by the Church-wardens is delivered to the Visitor or his Deputy, and Procurations paid, and the Visitation is ended; when for the most part nothing is well, or as it should be: The Churches kept like Swine-styes (I beg pardon for the comparison, I wish it were not too true) the Floors broken up, the Windows broken down, the Church and Building belonging to the Parsonage and Vicarage Houses dilapidated, the Parson Non-resident, Pews in

in the Church built so high and disorderly that the Behaviour of the People therein cannot be observed, Books and Ornaments of the Church wanting or imbezeled; and it is not likely the Parson and Churchwardens should present these things, when themselves are commonly most in fault; and besides the Churches, the Churchyards how are they used, their Fences neglected, Swine rooting in them, Muck-heaps thrown in them, and prophane gaming and other debaucheries used in them, shame to see or hear of?

There was complaint in the Council of *Toledo*, *Quod quidam Episcopi negligebant suas parochias visitare singulis annis ad prædicandum & ad confirmandos pueros, procurationes tamen exigebant, ac si Ecclesias visitarent: quod ex avaritia & negligentia procedat.* There it was decreed in that Council, *ut hoc de cætero non faciant Episcopi, sed solicite & diligenter greges visitent, cupiditatem vitantes, & negligentiam dimittentes.* Causa 10. q. 1. Relata est.

Certainly if there was Cause of such Complaint in those days, there is much more now.

I do not speak this, as though it were now a Duty incumbent upon the Reverend Bishops to visit in person *Ecclesiatim*; their Age and great Imployments, and the Canon gives leave to do it by their Substitutes the Arch-Deacons: But if their Lordships would be pleased to enjoyn their Arch-Deacons to visit every third year *Ecclesiatim*, when their Lordships hold their triennial Visitations, and give their Lordships *By the Canons of King* James *they are to visit every year.* Can. 86.

ships a personal account how they found all things, it would work a great Reformation in the Miscarriages before-mentioned; and the Arch-Deacons would certainly be ready to obey such a command, *Ne magis videantur lucris pecuniariis inhiare, quam Ecclesiarum velle conservare statum, & salutem animarum quærere*; and then it were reason they should have their Procurations that year also.

Othobon. cap. Naturalis dispositionis.

The same worthy Author that has brought me into this Discourse, tells us of another charge by the name of *Pentecostals* or *Whitsunday Farthings*; these are but a Charge upon some particular Churches, where by Custom they have been paid, and seem to be of the nature of Offerings: But I have never met with any thing more of them, than what I have received from that learned Author.

See Seldens *Hist. of Tythes* 219, 222, & 224.

Lastly, I will conclude with an accidental, but a grateful Charge, which is, That if the Founder or Benefactor to a Church, or their Posterity, becomes necessitous, they are from the same Church to receive Relief. *Si enim omnibus aliis* (says the Canon) *necessitatem sustinentibus pro solo religionis intuitu in usum res Ecclesiæ largiuntur, quanto magis consulendum est, quibus retributio debetur?*

4 Concil. Tolet. c. 37.

All these Charges and more the secular Clergy undergoes, which takes away a considerable part of their Revenues.

CHAP.

CHAP. XVI.

The Sixteenth Chapter ſhews how far Preſcription will prevail in the manner of Tything, and in what Caſes the Parſon, Vicar, &c. *ſhall be bound by a* Modus decimandi.

THE Canoniſts, and thoſe that are of Opinion that Tythes are due *jure divino*, decry all Cuſtoms and Preſcriptions that either diminiſh the Tenth part, or acquit the whole; for in truth, no Cuſtom or Preſcription, can be good which is poſitively againſt the Law of God.

The force of a Modus decimandi in Tything. Lindwood ca. Quoniam propter verbo redemptionem.

And that is the reaſon why it is frequently ſaid in our Law-Books, that the Eccleſiaſtical Courts will not allow a *Modus decimandi.*

Co. *Select Caſes*, 46. Dyer 79. p. 49.

But the Common Lawyers allow Tythes to be due *Jure Divino ſecundum quid*, that is, *quoad ſuſtentationem cleri*, but not *quoad decimam aut aliquam aliam certam partem*; and therefore they allow of a manner of Tything which diminiſheth the *Quantum*, or a Cuſtom of not Tything for this or that particular thing, ſo there be a ſufficient Maintenance for the Clergy beſides: and of the ſame Opinion are ſome of the moſt eminent School Men. And in this, as in all other things where the Common Law, and Canon, or Eccleſiaſtical Laws differ, the Common Law is to be preferred;

Common Law and Canon differ concerning Cuſtoms, &c.

Tho. Aq. Sum. 2. 2æ. q. 87. art. 1.

ferred; for no Canons are of force in *England*, which are contrary or repugnant to the Laws, Statutes and Customs of this Realm, or to the damage or hurt of the Kings Prerogative Royal; but all other Canons Provincial still remain in force, and are confirmed by a Statute made in the 25 year of *H.* 8.

St. 25 H. 8. Cap. 19. Fine.

1 Inst. 344. a.

The difference between Custom and Prescription.

The difference between Custom and Prescription I have shewed before in the thirteenth Chapter.

The Common Law vindicated.

But before I proceed upon this Subject, I must beg leave of the Reader to say something more in vindication of the Common Law, which in this point I conceive does not differ materially from the Ecclesiastical and Civil Law; for if I do not very much mistake the Canonists and Civilians they do at this day allow of real Compositions in discharge of Tythes, that is, where the Parson, Patron and Ordinary do by Deed agree to accept of a certain Sum of Mony yearly, or so much Land or other profit in discharge of the Tythes growing and arising upon such Lands as they agree for. Now what is this but a *Modus decimandi*? and a Prescription to maintain this *Modus*, is no more than a supply to prove a real composition, which was made beyond all memory and lost; and it were against all justice and reason, that if a Man should be plundred of, or lose his Deeds, that he should thereby lose his Estate. And it must necessarily be intended, that every *Modus decimandi* that has continued time out of mind, must have a reasonable

Lindwood c. *Quoniam propter verb. Redemptionem.*

8 E. 4. 13. b. &c.

Seld. Hist. Decim. 408.

reaſonable and legal commencement, and muſt be intended that it began by a real compoſition.

A Rent-charge cannot be created but by Deed, and yet it may be claimed by Preſcription, ſuppoſing a Deed preceded; the like Law is of all Commons, *&c.*

Sir *Thomas Ridley*, a Learned Civilian, in his view of the Civil and Eccleſiaſtical Laws, inveighs againſt Prohibitions, and the Common Law in caſe *de modo decimandi*; and endeavours to inſinuate to the Reader, that the Spiritual Courts allow Preſcriptions *de modo decimandi*, and that the Common Lawyers do the Spiritual Courts great wrong to affirm the contrary. But he himſelf in the next precedent Section tells the Reader, that a Preſcription to pay leſs than a full tenth part, is both againſt the Canon Law, and againſt the Law of God it ſelf. Now in every Preſcription *de modo decimandi*, it is to be intended the rate Tythe was the full value of the Tythe at the time of the Original compoſition; for it cannot be preſumed that the Biſhop, Patron and Ordinary, would make a compoſition to the prejudice of the Church; and if the rate Tythe do not now reach the value, it is to be intended that either the Tythes are improved, or elſe that Mony is now become of leſs value, which makes the preſent inequality.

P. 181.

Lind wood cap. Quoniam propter verbo redemptionem. Conſuetudo nec præſcriptio juvat Laicos quoad decimam præſcribendum vel retinendum. cap. Quoniam ut audivimus verb. conſuetudine locorum quod laici minus ſolvant quam decimam, non poteſt conſuetudine introduci, quia eſſet contra jus divinum.

Put the caſe then, that in the time of *H.* 1. (for the purpoſe) the Lord of the Manor of *Dale* made a real compoſition with the Parſon

Co. 13. 152.

Parson of *D.* that he and his Heirs for ever, then after would pay to the Parson and his Successors, five pounds yearly, for the Tythes of his Demesns; and this composition was confirmed by the Patron and Bishop as it ought, and five pounds was the full value of the Tythes at that time. I think it will not be denied me but this was a good real Composition, and that if afterwards the Tythes had become of less yearly value, the Lord of the Manor had been bound by the Composition to pay the Five pound *per annum.* Then suppose on the other hand, that the Lord of the Manor after this Composition being thereby encouraged, made great improvement of his Demesns, by which the Tythes are become of much greater yearly value, or that Mony by the discovery of the *West-Indies* (as the truth is) be become of less value: Is there not then the same reason to bind the Parson as to bind the Lord in the other case? which being granted, as in all justice and reason it must, and the Lord having no other Evidence to make good his bargain but his Composition, and that in the late Wars was plundered, or his House by accident burnt, mislaid or imbezeled; shall he therefore lose his Composition which he must now be forced to claim by Prescription (his Composition being lost) because the Tythes are of greater yearly value than Five pound, as the Civilians would have him, or shall he be admitted to maintain his right by the Common Law, I appeal to the judicious and indifferent

rent Reader which is more Juſt? Now the Judges of the Common Law, well knowing what the Judges of the Eccleſiaſtical Courts will do in this Caſe, and likewiſe that at this day there is no rate Tythe can come near the true value of the Tythe Wheat about the time theſe Compoſitions were made, not being perhaps above twelve pence or two ſhillings the Quarter, and now for the moſt part twenty times as much (not becauſe Wheat is of greater value than it was, but becauſe Mony is of leſs) they do in this caſe frequently grant Prohibitions to try whether there be ſuch a Cuſtom or no; and if they find there is no ſuch Cuſtom, they ſend the Cauſe back by Conſultation to the Eccleſiaſtical Court, to be there determined; but if they find there be ſuch a Cuſtom, they will not truſt the Eccleſiaſtical Judge any more with it, but leave the Party to take his remedy for the *Modus* in the Eccleſiaſtical Court. And for the very ſame reaſon Prohibitions are granted upon real compoſitions. And by the Eccleſiaſtical Law Tythes are due of Minerals, Turfs, fiſhing in the Sea, *&c.* which the Common Law denies, and therefore if Suits be in the Eccleſiaſtical Courts for any of theſe things which are due by the Spiritual, but not by the Common Law, the Judges of the Common Law do grant Prohibitions to ſtay their Proceedings.

And St. *German* in the *Doctor and Student* puts this Caſe, That if it were ordained for a Law, that all payments of Tythes from thence- Lib. 2. cap. 55. f. 167. a.

thenceforth should cease, and that every Curate should have a certain portion of Land assigned to him, or a Rent or Annuity which should be sufficient for his maintainance and those that served under him, or that every Housholder should give a certain Sum to that use, that this were a good Law, and grounded his Opinion upon this saying of Doctor *Gerson*, a great Doctor in Divinity, *Solutio decimarum sacerdotibus est de Jure Divino quatenus inde sustentetur; sed quoad tam hanc vel illam assignare, aut alios in alios redditus commutare positivi juris existet.*

And this commuting Tythes into Annual Salleries is frequently practised in the Protestant Churches beyond Sea, as I have been informed.

Prescriptions are confirmed by Parliament.

And these Prescriptions *de modo decimandi* are not only allowed by the ancient Common Laws of this Realm, but confirmed by Act of Parliament.

St. 2 E. 6. c. 13. *For by the Statute of* 2 E. 6. *It is Enacted, That no person shall be sued or otherwise compelled to yield, give or pay any manner of Tythes, for any Manors, Lands, Tenements, &c. which by the Laws and Statutes of this Realm, or by any Priviledge or Prescription are not chargeable with the payment of any such Tythes, or that be discharged by any composition real.*

And having said thus much in vindication of the Common Law, I shall proceed to shew what Prescriptions and Customs, *de modo decimandi vel de non decimando* are good and allowed at Common Law.

First

Who may not prescribe in non decimando. Seld. Hist. Decim. 409.

First, No Lay-Man can prescribe in *non decimando*, that is, to be discharged absolutely of the payment of Tythes, and to pay nothing in lieu thereof, unless he begin his Prescription in a Religious or Ecclesiastical Person, and derive a Title to it by Act of Parliament.

Rolls 1. 653.

Who may prescribe in non decimando. Winch. 65. Brownl. 1. 31. Co. 2. Evesque Winchesters Case.

But all Spiritual and Religious Persons, as Bishops, Abbots, Priors, Deans, Prebends, Parsons, Vicars, *&c.* may prescribe in *non decimando*, and their Farmers may make use of such Prescriptions to free themselves from the payment of Tythes.

Rolls 1. 653. H. 3. 5.

And hence it is, that the Parson or Vicar of one Parish, that hath part of his Glebe lying in another Parish, may prescribe in *non decimando* for it, that is, as hath been said, to be free from the payment of any manner of Tythe for it.

Rolls 1. 653. H. 6.

Churchwardens not.

But Churchwardens who have Land belonging to their Churches cannot prescribe *in non decimando*, because they are neither Religious nor Spiritual Persons.

Rolls 1. 653. H. 7.

A Clergy-Man may prescribe for himself and Tenants.

It hath been held that a Bishop may prescribe that he and his Tenants for Life, Years and Will, and his Copyholders have been freed from the payment of Tythes; the reason alledged is, because it might commence by a real composition for the whole Manor.

Rolls 1. 653. H. 4. C. 2. 45. 2.

And in all Cases where a Spiritual Person prescribes *in non decimando* his Tenants and Farmers shall take the benefit thereof.

St. 27 H. 8. c. 28. Rolls 1. 654. J. 1. contra. Hob. 309.

But if any of the Abbots, Priors, *&c.* that came to the Crown by the Statute of 27 *H.* 8. were discharged of the payment of Tythes by Prescription *de non decimando*, yet the Patentees of these Lands shall not have the benefit of such Prescriptions, but shall pay Tythes.

Rolls 1. 655. l. 2 *Patentee del Roy.* Hetley 52. 60. Cro. Car. 94. dubitatur. Brownl. 1. 31. contra.

Neither can the Kings Patentee be freed from the payment of Tythes of those Lands which the King whilst he had them in his own hand prescribed to be freed from the payment of Tythes, because it is a Personal discharge in the King, for the question arising upon Lands disafforested, there might be several reasons why he paid no Tythes; first, because the Grounds were depastured with Beasts *feræ naturæ* for which no Tythes were due, or for that the King was not bound by the Decretal Epistle of Pope *Innocent* the Third, who setled the Parochial Right of Tythes, or by reason the King being a mixt Person might prescribe *in non decimando*. But if the King prescribe *in non decimando* for Lands and grants them over the Presentee shall not by such Prescription be discharged, nor shall the King be discharged if the same Lands come to him again.

Cro. Car. 94. Dubitatur, Ideo quære. Roll 2. 655. Hardres 315.

But the Kings Patentees of those Abby Lands that came to the Crown by the Statute of 31 *H.* 8. may take advantage of a Prescription *de non decimando* in the Abbot, Prior or other Religious Person by the force of that Statute, and the enjoyment of the Lands since the dissolution freed from

from the payment of Tythes during Memory, is a good Proof *a posteriore*, that the Abbots, Priors, *&c.* held the ſame diſcharged from the payment of Tythes.

The Inhabitants of a County, Hundred or Country, as the Wilds of *Kent* and *Suſſex* may preſcribe not to pay Tythes of Wood, Milk, or any other particular thing, ſo there be a competent Livelyhood for the Clergy beſides.

A Country may preſcribe in non decimando. Lib. Intr. tit. Prohibit. Co. 2. 44. b. Doct. & Stud. l. 2. c. 55. f. 166, 167. b. 174. b. Roll. 1. 653. H. 10, 11, 12, 13.

But every Lay-Man may preſcribe *de modo decimandi*, that is, that ſuch a Man being Lord of ſuch a Mannor, and all thoſe whoſe Eſtate he hath in the ſaid Mannor, have from the time whereof the Memory of Man is not to the contrary, had and enjoyed to his and their own uſes all the Tythes ariſing, *&c.* within the ſaid Mannor, paying ſo much yearly to the Parſon of *D.*

Who may preſcribe de modo decimandi. Co. 2. 44. a. b. Cro. El. 599, 758, 784.

And a Lord of a Manor may preſcribe for himſelf, and his Copyholders, for they are part of the Demeſns of the Mannor; or the Copyholder may preſcribe in the name of his Lord.

Cro. El. 784. Noy 132.

If a *Modus decimandi* be to pay two things, as two ſhillings for a Park, and a Shoulder of every Buck kill'd in the Park, and all the Dear die or are killed up, yet notwithſtanding the Preſcription holds good for the two ſhillings.

Hob. 40. 41. *A* Modus *to pay two things, and one fails.*

But every Preſcription and *Modus* muſt have a Continuance, for it cannot be good at one time, and aſleep at another, neither

Hob. 43. *Preſcriptions muſt not ſleep.*

ther can a wilful denial destroy a *Modus decimandi*: And it is taken for a Rule in Dr. *Leyfield* and *Tisdal*'s Case, that where no Tythes are regularly and legally due, as for a House, *&c.* there can be no *Modus decimandi* alledged.

Hob. 11.·. Modus *for Houses.*

And yet it hath been held, that a Tythe by Prescription may be paid for an House, because it might be due for the Land before the House was built. *Ideo quære.*

Co. 11. 162. Hob. 11.·. Quære. Rolls 1. 640. b. 5. Hob. 107.·.

A *Modus* to pay Tythes without the view of the Parson is not good, because it conduces to fraud, and is now against an Act of Parliament.

Rolls 1. 651. d. 16, 17, 18, 19. Cro. El. 446. Co. *Select Cases*, 45.·. More 454.

So a *Modus* that because you have paid your Tythe of your Cows, you have been freed of the Tythes of Oxen, Steers, Heyfers, *&c.* is not good; that is, to pay your Tythes in kind of one thing, thereby to free another Tythe.

Noy 108.·.

But where Tythe is only due by Custom, as for Fish taken in the Sea, there less than a tenth part may be good.

Cumberlands *Case*, per Rol. P. 13 Jac. B. R. *What Prescriptions* de modo decimandi *are good.* 2 Leo. 70.

And it hath been held a void Prescription to pay a Load of Hay yearly in discharge of all his Tythe Hay, that is, to pay a part in discharge of the whole.

So for a Parishioner to prescribe that he, *&c.* has time out of mind repaired the Church, and by reason thereof hath been discharged of the payment of Tythes, is no good Prescription, for the Parson not being bound to repair the Church has no recompence: But if it had been, that he had repaired the Chancel, and in consideration thereof had been freed of the payment of Tythes,

Rolls 1. 649. 1. d. 8, 9.

Tythes, that had been a good *modus, ratio patet.*

It hath been held a good Preſcription, that the Pariſhioner hath time out of mind paid the Tythe Wool of all the Sheep he has ſhorn, though never ſo lately bought in, and in conſideration thereof hath been freed of the payment of the Tythe of thoſe he had ſold before *Shereday.* *Wool and Lamb.* Rolls 1. 648. c. 1. 649. d. 7.

It hath been held a good Preſcription, to have paid the tenth Fleece or Pound of Wool, ſo there were any allowance for the odd Fleeces or odd weight. Rolls 1. 648. c. 4.

It hath been adjudged a good *Modus,* that in conſideration the Pariſhioner hath ſhorn and wound the Wool, to be free of paying Tythes of the Neckings and Birlings without fraud. Rolls 1. 649. d. 5.

It is a good Preſcription, that the Pariſhioner hath time out of mind paid a half-peny for every Lamb ſold before *May-day*; but if the Pariſhioner ſell his Lambs fraudulently a few days before *May-day*, on purpoſe to defraud the Parſon, *&c.* it is no good diſcharge. Rolls 1. 652. g. 1.

A Preſcription to pay wool in kind, if kept till Clipping-day, but if ſold before, to pay a half-peny a Fleece, as Mr. *Marſh* reports, was held no good Preſcription, *tamen quære.* Marſh. 79.

It hath been held a good *Modus*, that in conſideration that the Pariſhioner hath mowed, reaped and ſhockt the Corn, and paid his Tythe in the ſhock, that he hath been freed of the payment of any Tythes of the Rakings; but as Sir *Edw. Coke* ſays, there needs no *Modus* as to Rakings without fraud. *For Corn.* More 474. Littl. Rep. 31.

Rolls 1. 648. b. 6.

To prescribe to have paid the Tenth Sheaf or Shock as it falls out, is no good Prescription to free the Parishioner of any other Tythe, it being no more than is due.

Rolls 1. 649. d. 4.

A *Modus* that in consideration, that the Parishioner hath sowed, reapt, bound and set up the Corn one year to be free from the payment of Herbage the next year of the same Land, was was held good, *Tamen quære.*

Rolls 1. 650. d. 11.

But it is no good consideration, that in consideration the Parishioner has plowed, sowed, mowed, cockt and set out the Tythes of part, that therefore he should be freed of paying Tythes of a small parcel left standing.

Wood.

Rolls 1. 648. b. 7.

A Man may prescribe to pay the Tenth Acre or Rood of Wood standing, and the Parson, *&c.* cut it himself, as is used in some parts of *Lincolnshire.*

Calves and Milk.

Rolls 1. 648. c. 2.

Rolls 1. 651. d. 19.

Cro. El. 609. 786.

It hath been held a good *Modus* to pay one Calf at seven, and if under, a half-peny a piece, and if he sell any Calf to pay the tenth part of the price, and it hath been held a good *Modus* to pay Tythe Cheese from *May-day* till *Michaelmas* to be discharged of the whole Tythe of the Cows, and no Tythe is due for Cheese but by Custom, and the labour of milking and making into Cheese is added, whereas nothing but the Tythe of Milk is due by Law.

Rolls 1. 651. d. 17.

But it is no good *Modus* to pay for every Milch-Cow two pence, and for every Calf one peny, in discharge of the Tythes of

of all other Cattel, but it is a good *Modus* for the Calves and Milk only; ſo a *Modus* to pay a Tythe Calf in ſatisfaction of the Tythe of all manner of Cattle is not good. Rolls 1. 651: d. 18.

A *Modus* to pay thirty Eggs in *Lent* in ſatisfaction of all the Tythe of Eggs has been held a good *Modus*. *Eggs.* Rolls 1. 648. c. 3.

It is a good *Modus* that the Parſon time out of mind hath had ſo much, or ſuch a parcel of Meadow or Land in ſatisfaction and diſcharge of all the Tythes of Hay, *&c.* ariſing upon ſuch Land. *Land in lieu of Tythes.* Rolls 1. 649. d. 16. Cro. El. 587. 8 E. 4. 14. a.

It is no good *Modus* to be free from the payment of Tythe Hay ariſing upon Hades, Balks, Greenſlips, or Doals eaten by Beaſts of the Plow, in regard the Pariſhioner hath ſow'd, mown, reapt, ſhockt and prepared the Corn, *&c.* But the contrary hath been held, *Ideo quære.* *Headlands, Balks, &c. and Hay.* Rolls 650. d. 10 Noy contra 15

But in conſideration that the Pariſhioner hath made the Graſs growing in ſuch a Cloſe, and then paid the Tythe of it, he hath been free of the payment of the Tythes of the Balks and Hades, has been held good. Hetly 147.

It is not a good *Modus* that the Pariſhioner having ſpent all his Hay upon the Beaſts of the Plough, that therefore he ſhould be free from payment of Tythe Hay. Rolls 1. 650. d. 13.

But a *Modus* that in conſideration the Pariſhioner hath cut, dried and ſhockt the Corn, he hath been freed from the payment of Tythe Hay, has been held a good Preſcription. Rolls 650. d. 13.

Noy 31. A *Modus* that the Pariſhioner hath time out of mind got Ruſhes and ſtrewed the Church, and in conſideration thereof hath been diſcharged of the payment of Tythe-Hay, has been adjudged no good *Modus*; but if it had been to ſtrew the Parſons Seat, or to deliver Straw to the Parſon to ſtrew the Church, had been a good *Modus*.

Cro. El. 276.

Syderf. 258. But a *Modus* to pay to the Dean and Chapter, though Spiritual Perſons and Lords of the Manor, is not a good diſcharge againſt the Parſon.

Rolls 1. 647. b. 1, 2, 3, 4. 648. d. 1, 2. 649. d. 3, 4. Hetly 133. Hob 250. More 910. Cro. El. 660. 2. Inſt. 652: And it hath been held a good *Modus*, that in conſideration the Pariſhioner has made the Hay into Graſs-cocks, that therefore he hath been diſcharged of the Tythe of the Aftermath; but Sir *Edward Coke* declares for Law, that there needs no *Modus* to be alledged, but that Aftermath is of it ſelf freed from the payment of Tythes, and ſo I take it the Law is held at this day.

Bees. Rolls 1. 652. d. 15. A *Modus* to pay the tenth part of all the Hony and Wax of Bees killed, has been held a good *Modus* for the Tythe of Bees.

But there have been ſome Opinions, that there is no Tythe due by the Law for Bees, becauſe they are *feræ naturæ*. But nevertheleſs both by Cuſtom and Canon they may be Tythable, and ſo they are in moſt places.

Herbage. Bulſtr. 2. Price verſ. Maſcal. More 909. A Cuſtom or Preſcription to pay no Tythe for the Herbage of Beaſts bred up for the Plow and Pail hath been allowed to be a good cuſtom: but of this ſee more before in the fifth Chapter.

It

Gueſt-Horſes. Roll 1. 650. d. 14.

It is no good *Modus* that the Owner of the Land hath paid all his Tythe for his Cattel there depaſtured, therefore to be free of the Tythe Herbage for Gueſt-Horſes.

Fewel. More 909.

It hath been held that no Tythes ſhall be paid for the Fewel ſpent in the dwelling Houſes in the ſame Pariſh it grew, without alledging any *Modus* at all.

Cro. Car. 113. Norton verſ. Farmer. T. 4. Car. 1. C. B.

But it ſhould ſeem that in this laſt Caſe there needs no *Modus* at all to be alledged, but that for the Fewel ſpent in the Owners Houſe in the ſame Pariſh, there is no Tythe due of common right. *Ideo quære.*

Parks. Rolls 1. 651. c. 1 and 4. Maſcal verſ. Price. P. 13 Jac. B. R. Hob. 39. Hutton. 58.

If a Man preſcribe to pay ſix ſhillings and eight pence, for all the Tythes ariſing and happening in ſuch a Park, and the Park is diſparkt and turned to Tillage, the Preſcription is gone.

But if in this caſe he had made his Preſcription, that in conſideration of ſix ſhillings and eight pence yearly paid to the Parſon, *&c.* he had been freed of all the Tythes ariſing upon ſix hundred Acres of Land, called *D.* Park, this had been a good Preſcription, and ſhould have freed the Park.

Rolls 1. 652. c. 5. More 909. Boothby verſ. Reynels. M. 20 Ja. B. R.

So if the Preſcription of a Park have been to pay ſix ſhillings and eight pence, and a Shoulder of every Buck killed in the Park, in diſcharge of all Tythes ariſing within the ſame, in this caſe, though the Park be diſparked, and no Deer left, yet the *Modus* remains, and ſhall diſcharge the whole Tythe.

And

M. 10 Jac. 10. 641. B. R. Hutton 57. Noy 146. Owen 34. Noy 148. More 909.

And it has been held a good *Modus* to give a Buck and a Doe yearly to the Rector, *&c.* in discharge of all the Tythes arising within the Park, although they be *feræ naturæ*; and it shall hold though the Park be disparked.

But if the *Modus* have been only for the Herbage of the Park, and if it be disparked and sown with Corn the *Modus* is gone.

Modus *for Land.* Hutton 58.

If a Parson, *&c.* have had an Acre or piece of Meadow Ground time out of mind, in discharge of all the Tythe Hay arising upon such a Farm, this shall only discharge the Hay upon the ancient Meadowing, and not the Hay of Ground converted from Pasture or Tillage to Meadowing.

Rolls 1. 651. c. 1. 2 Inst. 490.

But if one have a *Modus* for all the Demesn of his Mannor, and erect a new Mill, this shall be comprehended within the *Modus* and shall not pay any Tythe.

Rolls 1. 651. E. 2.

But if a Man have a *Modus* for all the Hay and Grass upon twenty Acres of Land, and converts the same to Tillage, or into a Hop-yard, he shall pay Tythes thereof: So it appears a great difference where the *Modus* goes to all manner of Tythes in general, and where to particular Tythes.

* *where a* Modus *to the Vicar shall discharge against the Parson, and* è converso.

* Where a *Modus* is alledged to pay a certain Sum to the Vicar in discharge of any Tythes due to the Parson, this being a dispute of the Right between two Clergy-Men, ought to be determined in the Eccle-

Eccleſiaſtical Court, but it ſeems to be a good *Modus* as to the Pariſhioner, and ſo it was held in the Caſe of *Pool* and *Reynels* in the Kings Bench. *Mich.* 10 *Jac.* But Mr. *Ware* reports a Caſe to be adjudged *H.* 18 *Jac. B. R.* that it was no good *Modus*, and that *Henden* vouched one *Bank*'s Caſe to be adjudged accordingly. *Ideo quære.* But it ſeems a good *Modus*, for this being originally a *Modus* between the Parſon and Pariſhioner, the Vicar might be endowed with the *Modus*; but this muſt be intended alſo where the endowment is time out of mind, and not to be produced, or where the Vicar hath it ſpecially in his endowment.

More 907. Cokes *Select Caſes* 37. Cro. El. 137. Hutton 57. 10 Jac. r. 641. Modus *to pay a Rate to the Vicar for Tythes due to the Parſon.*

A payment to the Parſon by Cuſtom may be good againſt the Vicar.

But to pay a Rate to the Pariſh Clerk is no good diſcharge of Tythes againſt the Parſon or Vicar, unleſs the Parſon be bound by Cuſtom to find the Pariſh Clerk, nor is a *Modus* to the Parſon a good diſcharge againſt the Vicar.

Yelverton 86. contra Bulſtr. 3. 220. Leonard. 1. 94. Cro. El. 71. Bulſtr. 1. 220. Wintel verſ. Child, M. 14 Jac. B. R.

And ſo having ſhewed what Preſcriptions *de modo decimandi*, and *de non decimando*, are good and allowable at the Common Law, in the next place I ſhall ſhew how a *modus decimandi* or Preſcription may be deſtroyed or loſt.

CHAP.

CHAP. XVII.

The Seventeenth Chapter ſhews how a Modus decimandi *or Preſcription may be loſt or deſtroyed.*

Rolls 1. 652. f. 1, 2. *What Matter will deſtroy a* Modus.

IF a Man have a *Modus* for a Mill, which is removed of neceſſity to a new place, becauſe the Water *invito* has changed its courſe, here though the Mill be removed, the *Modus* remains.

But if the Owner of ſuch a Mill ſhall of his own accord, and without any cauſe of neceſſity remove his Mill to a new place, in this caſe he ſhall loſe his *Modus*.

Rolls 1. 652. f. 2.

If a Man have a *Modus decimandi* for two Meſſuages and two Mills to pay twenty ſhillings *per annum*, and he erects a new Mill in one of the Meſſuages, the *Modus* ſhall not extend to free the new Mill.

Stepney verſ. Warren. P. 41 El. B. R.

There have been Opinions that Unity of Poſſeſſion, that is, to have Fee-ſimple in the Rectory, and likewiſe in the Land to which the *Modus* is annexed, ſhould deſtroy a Preſcription or *Modus decimandi*.

Sir *John Hollis* Caſe. T. 9 Jac. B. R.

But if a Man have four Water Corn-Mills, for which he hath time out of mind paid a *Modus* of four ſhillings *per annum*, and pulls down one of them, yet the *Modus* remains, and he ſhall ſtill pay the four ſhillings.

CHAP.

CHAP. XVIII.

The Eighteenth Chapter ſhews, by what Conveyances, and by what Names Tythes may be granted, conveyed, demiſed, &c. and what Demiſes Parſons and Vicars may make of their Glebe and Tythes.

REgularly Tythes at this day cannot be granted or demiſed but by Deed in Writing under Hand and Seal, or by matter of a higher nature, as Fines, Recoveries, &c. But in ſuch Caſes as they are become Lay-Fee they may be deviſed by Will in writing as Lands may; but they cannot be granted by Copy of a Court-Roll, becauſe they cannot be parcel of a Mannor.

Stiles 261. *By what Conveyances Tythes will paſs.* Hungerford verſ. Hawland. T. 36 El. ro. 560. per Owen. Cro. El. 814.

But Tythes cannot be conveyed or demiſed by any parol Agreement, unleſs it be to the Owner of the Land for one year by way of Retainer: * And ſome Opinions have been, that is, it is good for more years. *Ideo quære.*

Brettyman verſ. Woodward. P. 31. El. ro. 17. b. R. B. Noy 89. Cro. Jac. 137. Hetley 3.

Hughes 233. Bellamy verſ. Bapthorp. M. 2 Car. ro. 179. B. R. Co. 4. 35. a. * Yelverton 94, 95. Latch 176. Noy 81. 121. Yelverton 94, 95. Brown 2. 11. Ideo quære.

Tythes impropriate are at this day by the ſeveral Statutes of diſſolution become Lay-fee, and will paſs by the name of Heredita-

reditaments; but by the Grant of a Portion of Tythes, the Tythes belonging to a Rectory will not pass.

There has been some Opinions that a Man may without Deed sell his Tythes to the Land-holder for more years than one, but not lease them without Deed.

Tythes impropriate may be past from one to another by Deeds of Bargain and Sale, inrolled according to the Statute of 27 *H.* 8. they may be transferred in use upon good consideration by Deeds of Covenant to stand seised, or by Fines or Common Recoveries, and may be sued for by Writs of Assize, of Novel Disseisin, Writs of Entry, Writs of Right, or other real Actions, or by *Ejectione firmæ.*

Stat. 32 H. 8. cap. 7.

But upon a Lease for Lives of Tythes, no Rent can be reserved to be recovered at or by the Common Law, for no Action of Debt will lie, or Distress can be taken, *& ubi non est remedium, ibi non est jus.*

But upon a Demise of Tythes for years a Rent may be reserved, because an Action of Debt will lie upon such Lease upon the Contract.

CHAP.

CHAP. XIX.

The Nineteenth Chapter ſhews, what barren Lands are free from the payment of Tythes within the Statute of 2 E. 6. cap. 13.

IN the Statute of 2 E. 6. there is a *Proviſo* to this effect: 2 Ed. 6. ca. 13.

That all ſuch barren Heath or waſte Ground, other than ſuch as be diſcharged from the payment of Tythes by Act of Parliament, which before this time have lain barren and paid no Tythes by reaſon of the ſame Barrenneſs, and now be, or hereafter ſhall be improved and converted into arable Ground or Meadow, ſhall from henceforth after the end and term of ſeven years next after ſuch Improvement fully ended and determined, pay Tythe of Corn and Hay growing upon the ſame, any thing in this Act to the contrary in any wiſe notwithſtanding.

This Clauſe was added for the encouragement of Tillage and Improvement of Lands by Water or otherwiſe; and therefore though here be no words of diſcharge of the payment of Tythes, during the firſt ſeven years, yet by a reaſonable intendment, the ſame ſhall be diſcharged from the payment of Corn and Hay, for the firſt ſeven years after the Improvement; and that is proved by the ſubſequent Clauſe, whereby it is provided. 2 Inſt. 656. Dyer 170. b. P. 5.

That

Plowd. 204. a. 396. b.

That if any such barren waste or Heath-Ground hath before this time been charged with the payment of any Tythes, and that the same be hereafter improved and converted into Arable or Meadow, that then the Owner or Owners thereof shall during the seven years next following from and after the same Improvement, pay such kind of Tythes as was paid for the same before the said Improvement, any thing in this Act, &c.

So that it appears plainly by this *Proviso*, that it was the intent of the makers of this Law only to free these improved Lands from the payment of such Tythes as were produced by the improvement, which must be Hay or Corn, and no other.

Next, suppose a Man have barren Lands within this Law which are free from the payment of Tythes by Prescription, real Composition, *&c.* It should seem by the penning of the aforesaid *Proviso*, that he should pay Tythes for the same after the seven years, this *Proviso* only providing for such Lands as are freed by Act of Parliament.

But that doubt seems cleared by the next precedent *Proviso* in this very Act, whereby it is provided.

That no Person shall be sued or otherwise compelled to yield, give or pay any manner of Tythes for any Mannors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledge or Prescription, are not chargeable with the payment

ment of any ſuch Tythes, or that be diſcharged by any Compoſition real.

So that this *Proviſo* preſerves all former legal diſcharges.

But the great queſtion upon this Law is, what ſhall be ſaid to be barren Heath or waſte Ground within this Law, and Sir *Edward Coke* defines barren Land in theſe Words.

Terra ſterilis eſt terra infœcunda nullum ferens fructum. But that definition will not hold in this Caſe, for it does appear by the ſecond *Proviſo*, that ſuch barren Lands are intended that are barren *quoad Agriculturam*, that is, ſuch barren Heath or waſte Ground that of its own nature, without improvement by Lime, Marle, Manure, *&c.* will not bring forth Corn or Hay. 2 Inſt. 655, 656. Dyer 170. p. 5. Co. Ent. 462, 463.

But if the Ground be not fit for Tillage, yet if it be not *ſuapte natura* barren, it is not within this Law. As if a Wood be ſtubbed and grubb'd up, and made fit for the Plough, and reduced to Tillage, it ſhall pay Tythes preſently; for Wood-ground is *Terra fertilis & fœcunda.* 6 E. 6. per Bendloes. 2 Inſt. 656. Hill. 9 Jac. C. B. *ex motione* Houghton.

So if Mariſh, Meadow or other Land by neglecting to ſcower the Trenches or Sewers, or by ſudden inundation be drowned; or if by ill husbandry or negligence fertil Land be over-run with Gorſs, Whins, Broom, Fern, Buſhes, Briars, *&c.* yet they ſhall not have the benefit of this *Proviſo*, becauſe of their own natures, they are fertile and apt for Tillage, and the Parſon, Vicar, *&c.* ſhall not loſe his Tythe by the ill husbandry of the Pariſhioner. 2 Inſt. 656. More 909.

If Lands were barren Heath or waſte Ground at the time of the making of this Act, and were improved, and had or might have had the benefit of this Law, and after return to their barrenneſs, the Owner of ſuch Lands ſhall not have the benefit of this Law a ſecond time upon a ſecond improvement; but I take the Law to be otherwiſe, if the Lands had been improved before the time of the making of this Law, and were then become barren again, for there I take it, upon a new improvement the Owner of ſuch Lands ſhall have the benefit of this Law.

Co. 10. 86. b.
Co. 3. 18. a.

Mariſh Lands new gained from the Seas, and Fen Lands gained from the freſh waters by draining, banking, *&c.* are not within the meaning of this Law to be freed from the payment of Tythes, during the firſt ſeven years after the gaining.

More 430.
3 Bulſt. 165.
2 Inſt. 656.

But the Determination of this point, which is or which is not barren Land within this Statute, commonly falls out to be determined by common Jurors, which notwitſtanding the Direction of the Judge are ſeldom ſo favourable to the Church as they ought.

This *Proviſo* only charges the payment of Corn and Hay after the ſeven years; and the ſecond *Proviſo* provides only for the payment of ſuch like Tythes as were formerly paid before the Improvement, for the firſt ſeven years after the Improvement, and makes no proviſion for the payment of other Tythes, ſave Corn and Hay, after the ſeven years: So that it may ſeem to

27 H. 8. c. 20.
32 H. 8. c. 7. *confirmed by the Statute of* 2 E. 6. *Canons Provincial.*
Cap. *Quia quid maledictionis.*
Cap. *Erroris damnabilis.*

to imply a diſcharge of all Tythes, but Corn and Hay after the ſeven years: But to this I anſwer, that there being ſeveral Laws both Statute and Canon made formerly for the due payment of Tythes, and no negative words in this Act, it ſhall not abrogate thoſe Laws to the prejudice of the Church by implication.

Cap. *Quoniam propter.* Cap. *Quoniam ut audivimus*, &c.

CHAP. XX.

The Twentieth Chapter ſhews, what a real Compoſition is, and in what Caſes Lands ſhall be freed of the payment of Tythes by ſuch Compoſition real.

THAT which we call a real Compoſition is, where the preſent Incumbent of any Church, together with his Patron and Ordinary do agree by Deed under their Hands and Seals, or by Fine in the Kings Court, that ſuch Lands ſhall be freed and diſcharged of the payment of all manner of Tythes for ever, paying ſome annual payment, or doing ſome other thing to the eaſe, profit or advantage of the Parſon or Vicar, *&c.* to whom the Tythes did belong: And theſe real Compoſitions have ever been held and allowed here in *England* to be a good diſcharge of the payment of Tythes: And from theſe real Compoſitions it is intended, all Preſcriptions *de modo decimandi* firſt took their

Where Tythes ſhall be diſcharged by a real Compoſition, and what it is.

Co. 4. 44. a.
2 Inſt. 655.
Doct. & Stud. l. 2. cap. 55. f. ult.

rise and beginning, though I doubt most at this day have grown up from the negligence and carelesness of the Clergy themselves.

Vide Lindw. cap *Quoniam propter verbo Redemptionem*, Upon this matter.

And such Compositions may be made by the Parishioner alone without the Patron and Ordinary, but it then binds only for the Life of the Incumbent, and will be avoided by his Resignation, Deprivation, or being absent eighty days in a year, from his Cure, if he have Cure of Souls.

But it seems some of the Canonists and Civilians are of Opinion, that all Compositions between the Lay and Clergy to be discharged wholly of payment of Tythes, or to pay less in recompence than the full value, are invalid, but otherwise between Clergy-men; but by the Common Law, which must govern here, there is no such difference allowed, but all real Compositions made as aforesaid are good and valid.

Hob. 176.

But note, That no Composition made by Parol or Word of Mouth only, and not reduced into Writing under Hand and Seal, is binding at all, unless it be upon Record as by Fine, *&c.*

But I conceive at this day no real Composition can be made to bind the Successor of the Parson or Vicar that makes the same, for they are now restrained by the Statute of 13 Eliz. *to make any Grants other than for twenty one years, or for three Lives, with the other qualifications mentioned in the said Act.*

13 El. cap. 10.

So

So that it ſeems clear to me, that Parſons and Vicars at this day, notwithſtanding the confirmation of the Patron and Ordinary, cannot charge their Benefices or any thing belonging to them, other than for twenty one years or three Lives as aforeſaid, and that only by Leaſes confirmed by Patron and Ordinary of things uſually demiſed; whereupon the accuſtomed yearly Rent or more is reſerved.

So that what has been ſaid concerning real Compoſitions is only to be intended of ſuch as were made before that and other later Statutes; for I take it a real Compoſition at this day will only bind the Parſon himſelf, whilſt he is Parſon Reſident, and ſerving the Cure, *quod nota.*

And it hath been held, that if there be two Proprietors or Farmers of Tythes, that an Agreement with the one ſhall bind his Companion. More 915.

The Canon Law allows a Compoſition with Lay-Men for Tythes received, but not for Tythes to come. Lindwood c. *Quoniam propter verbo Redemptionem.*

See a Decretal of *Alexander* the Third, whereby the Pope confirms Compoſitions betwixt Clergy-Men. Greg. Decret. l. 1. 445. c. 2. *Statuimus.*

CHAP. XXI.

The One and Twentieth Chapter shews, what Monastery Lands are, or may be free from the payment of Tythes.

Jones 317. 188. Stat. 27 H. 8. c. 28. *What Monastery Lands shall be freed from payment of Tythes.*

IT is without Dispute, that none of the Abby and Priory Lands, that came to the Crown by the Statute of 27 *H.* 8. or before, are freed or discharged of the payment of Tythes by the Statute of 31 *H.* 8. *cap.* 8. or by any other Law or Act of Parliament.

But in the Statute of 27 *H.* 8. there was a *Proviso*, that notwithstanding that Act the King might by his Letters Patents under the great Seal of *England* continue any of the said Monasteries, and that *Proviso* is left out of all the modern Prints, only *Rastal* in his abridging of that Statute makes some mention of it.

Now the Reader must observe once for all, that all Monasteries under two hundred pounds *per annum* were to have been dissolved by the Statute of 27 *H.* 8. and are therefore usually called the smaller Abbies, and those of two hundred pounds a year and upwards were not dissolved till the 31st year of *H.* 8. and are commonly called the great Abbeys.

And upon these two Statutes this Case lately hapned in the Exchequer Chamber between *Walklate* Farmer of the Rectory of

of *Utoxater* in the County of *Stafford* to the Dean of *Windſor*, and *Wilſhaw* Owner of the Farm in that Pariſh, that was parcel of the poſſeſſions of the Abby of *Croxden* in the ſame County, which was one of the ſmall Abbeys, and of the *Ciſtertian* Order; which Order was freed of the payment of Tythes, as ſhall be ſhewed hereafter, and this Abby was diſcovered by the Defendant *Wilſhaw* to be continued by Letters Patents under the great Seal of *England*, and ſo not diſſolved till the Statute of 31 *H.* 8. whereupon the Defendant was diſmiſſed, and the Court clearly held the Lands diſcharged of payment of Tythes by the Statute of 31 *H.* 8. I mention this Caſe for the ſingularity, not for any nicety in the Learning of it. 31 H. 8. c. 13.

By the Statute of 31 *H.* 8. before mentioned, there is a Clauſe to this effect. 31 H. 8. c. 8.

That the King and his Patentees, which then had, or then after ſhould have any Monaſteries, Abbathies, Priories, Nunneries, Colledges, Hoſpitals, Houſes of Friars, &c. *or any Mannors, Lands,* &c. *which did belong to them, ſhould have, hold, retain, keep and enjoy the ſaid Mannors,* &c. *according to their Eſtates and Titles diſcharged and acquitted of the payment of Tythes as freely and in as large and ample manner as the ſaid Abbots,* &c. *or any of them had, held, occupied, poſſeſſed, uſed, retained or enjoyed the ſame, or any part thereof at the days of their diſſolution.* *The Clauſe of* 31 H. 8. *that frees Abby Lands.*

And the Reader is to observe, that the Abbots, *&c.* at the time of their dissolution held their Lands discharged four manner of legal and regular ways, which were allowed by the Laws of this Realm, to wit,

Hob. 297. 296.

1. By the Bulls of Popes. 2. By real Compositions with the Parson, *&c.* Patron and Ordinary. 3. By Prescription. And 4. By Order.

But there is another sort of discharge, though not a legal one, has been allowed in this Case to make a fifth sort of discharge, and that is perpetual unity, where the Abbot has had the Rectory of any Church and Lands in the same Parish time out out mind, which have been held free from the payment of Tythes by all the time of memory; and of these several discharges I will speak in order.

And first of discharges by the Popes Bulls it is to be understood, that when the Pope usurped a power over the Clergy here in *England*, he did at his pleasure grant Exemptions to this or that Abby, or to whom else he pleased to be freed from the payment of Tythes which was allowed as a good discharge against the Parsons and Vicars, who in many places suffer by these Bulls to this day, these Bulls being turned into Prescriptions, *&c.*

Real Compositions.

The second sort of discharges was by real Compositions between the Parson or Vicar, and the Abbots, Priors, *&c.* confirmed by Patron and Ordinary; of these we have spoken at large before in the twentieth Chapter

Chapter, and therefore ſhall not repeat it, but paſs to the third ſort of diſcharges.

The third ſort of diſcharges is by Preſcription, of which we have likewiſe ſpoken at large before in the ſixteenth Chapter, to which I ſhall refer the Reader.

I ſhall only obſerve to the Reader again in this place, that the Abbots, Priors, and other Religious perſons might preſcribe generally to be free from the payment, or to be diſcharged of the payment of Tythes without any recompence to the Parſon, *&c.* but a Lay-Man could not preſcribe abſolutely to be free from payment of Tythes, but *ſub modo*, that is, paying or doing ſomething to, or for the Parſon, Vicar, *&c.* in recompence and ſatisfaction of the Tythes, as you may at large ſee in the Chapter here before.

And it is to be obſerved, that no Abbot, Prior, *&c.* could make any ſuch Preſcription by the Common Law, that was not founded before the time of memory, that is before the firſt year of *R.* 1. which is the time of the limitation of all Preſcriptions at the Common Law, which rejects the practice of the Canon Law, which, as ſhould ſeem, allows the limitation of a Preſcription or Cuſtom to 40 Years. 2 Inſt. 653.

It may reaſonably be demanded, how this manner of diſcharge can be made out at this day, ſince there is now no perſon living that can prove how the Abbots held and enjoyed their Lands; to which I anſwer, that what was done before the diſ-

ſolution

solution of Abbies must now be proved by what has been done since; for if Monastery Lands have been held all the time of memory since the dissolution, freed from the payment of Tythes, it shall be intended, that they were so held before; and therefore they have not paid or been questioned since.

Discharge by Order.

The fourth sort of discharge is by Order, and this discharge also for the most part depends upon Popes Bulls or Grants, who at pleasure granted Exemption to what Orders they pleased.

Causa 16. q. 1. decimas. 2 Inst. 652. Seld. Hist. decim. 120.

About the Year of our Lord, 1150. the most Religious Orders then in being were discharged of the payment of Tythes; but about that time Pope *Adrian* the IV. reduced them to *Cistertians*, *Hospitaliers* and *Templers*; and about the Year, 1215. Pope *Innocent* the III. added the *Præmonstratenses*.

Decret. Gregorii ex parte tua de decimis. Seld. de decim. 406. Dyer 277, 278. 4 Concil. Lat. Can. 56. Causa 16. q. 1. c. 2. Decim. & ibi questi sunt.

But the Piviledges granted to these Orders extended only to the Lands these Orders held in their own manurance, and not to any which was held by their Tenants or Farmers.

But about the beginning of the Reign of *H.* 4. the *Cistertians* attempted to have enlarged their Priviledge to their Tenants and Farmers, which tending to the ruine of many poor Parsons and Vicars that had Cure of Souls, was complained of in a Parliament held in the second Year of *H.* 4. Whereupon it was Enacted, That not only the *Cistertians*, but all other Orders that put any Bulls in execution for the discharging any of their Lands from the

the payment of Tythes in the Hands of their Tenants and Farmers, ſhall incur a Preminure, that is, forfeit all their Goods and the profits of their Lands during Life, and be likewiſe impriſoned during the offenders Life; which gave ſuch a check to that proceeding, that I do not find any thing of that nature after attempted.

The Templers. 2 Inſt. 432.

The *Templers* after in the Council of *Vienna*, which was held in the Year of our Lord, 1311. and in the fourth Year of *E.* 2. were condemned for Hereſie, and all their Poſſeſſions by Act of Parliament made in the 17th Year of the ſame King, were transferred to the *Hoſpitaliers* or Knights of St. *John* of *Jeruſalem*, who enjoyed them till the thirty ſecond Year of the Reign of King *Henry* 8. at which time by Act of Parliament they were ſetled upon the Crown.

Stat. 17 E. 2. c.

32 H. 8. c. 24.

Kelway 174. a.

But where it is ſaid in *Kelway*, that the *Templers* were condemned of Hereſie in the 8th Year of *E.* 2. and their Lands given the ſame Year to the *Hoſpitaliers*, it is a great error; for it is clear, that the Council of *Vienna* was held in the fourth Year of that King, and chiefly called againſt the *Templers*; and it is as clear that their Lands were not here in *England* ſetled upon the *Hoſpitaliers* till the 17th Year of the ſame King.

where the leſſer Abbies may be freed of Tythes.

And though the Lands of the leſſer Monaſteries be not within the benefit of the Statute of 31 *H.* 8. to be freed of the payment of Tythes; yet they ought to enjoy all ſuch Priviledges as are annexed to the Land,

Land, and therefore such Lands in whose hands soever they come, shall be freed of the payment of Tythes; by real Compositions and Prescriptions *de modo decimandi*, but not by Prescriptions *de non decimando*, unity of Possession, Order of Bulls of Popes: but in all those cases the Parsons and Vicars have the advantage by the dissolution of all those Abbies that were dissolved by the Statute of 27 *H.* 8. For the Parsons and Vicars shall in such case be restored to their Tythes again, which in all Justice they ought in all other cases, if the Parliament had been pleased.

Jones 3, 372, 373.

The lesser Monasteries, that is, which were under 200 *l. per annum*, of the Orders of *Cistertians* and *Premonstratenses* were, as hath been said, dissolved by the Statute of 27 *H.* 8. have lost the priviledge of being discharged of the payment of Tythes, unless they were continued as the Abby of *Croxden* was; but those Monasteries of those Orders that came to the Crown by the Statute of 31 *H.* 8. retain the priviledge of those Orders in not paying Tythes. But this is to be understood only for such time as the Owners hold them in their own manurance; for if they let them out to Tenants, they shall have no more priviledge than the Tenants of those Orders of the *Cistertians* and *Premonstratenses* had, which was none at all.

But it must be Owners in Fee-simple or Fee-tayl, and not Tenants for Lives or Years. Hardres 174.

But note, That if the King after the dissolution of the lesser Monasteries (which had been of any of the Orders that were discharged of the payment of Tythes) had

Jones 2,3, &c. Cro. Jac. 607. Hob. 306.

grant-

granted any of their Lands to any of the greater Monasteries which were not dissolved till the Statute of 31 *H.* 8. yet those shall not retain the Priviledges the Abbots had at the time of the former dissolution; the right immediately reverting by the dissolution to the Parsons and Vicars to whom the Tythes of right did belong, the greater Abbies could not hold them legally discharged at the time of the second dissolution: so that there is a manifest difference between this and the Case of *Walklate* and *Wilshaw* before remembred, for in that case the Monastery was continued and not dissolved till the Statute of 31 *H.* 8.

Lands of the lesser Abbies granted to the bigger not freed.

And it is to be observed, That no Lands acquired by any of the Monasteries of those Orders which were so freed from payment of Tythes after the Council of *Lateran*, which was in the Year of our Lord, 1215. and by consequence none that were founded after that Council, are discharged of the payment of Tythes, either in their own or their Tenants hands, for by that Council the Priviledge was limited to such Lands as these Orders had at the time of that Council.

Lands purchased after the Priviledges granted, not freed. Conc. Later. 4. Can. 55. Seldens *Hist. of Tythes* 121.

And although any Abby-Lands of the great Abbies which were of the *Cistertian* and *Præmonstratensian* Orders were in the hands of Tenants for Years at the time of the dissolution, yet the King and his Patentees after the Leases determined shall hold them discharged, whilst the Patentees and Owners hold them in their own hands,

Dyer 277. b. p. 60. Cro. Jac. 559.

hands, but the Kings Tenants shall hold them discharged because of the Royal Prerogative of his Person, not being intended fit for Husbandry.

5 Perpetual unity.
Co. 247. b. &c. Co. 11. 14. b. Dyer 349. p. 16. More 528. Hob. 311. 306. 298. 300. 2 Inst. 655. More 45, 47. Cro. Jac. 608.

Having now said thus much of the four legal manner of discharges before-mentioned, I shall proceed to that of perpetual unity, which cannot be said to be a legal discharge of the payment of Tythes: Yet because the Abbots, Priors, *&c.* at the time of the dissolution held the Lands discharged of the payment of Tythes, though not legally discharged of Tythes, it hath been resolved by many Judgments and setled, that this is a good discharge within the meaning of the foresaid clause of 31 *H.* 8. Now that which we call a perpetual unity, is, as hath been said, where an Abbot, Prior, *&c.* time out of mind hath been seised of the Lands out of which the Tythes arise, and the Rectory within which Parish the Lands lie.

Definition.

And it is to be observed that every perpetual unity, that shall discharge the Lands from the payment of Tythes, must have these four qualities.

First, It must be *justa*, that is, by good and lawful Title.

Co. 11. 44. b. Hob. 300.

Secondly, It must be perpetual, that is, the Abby must be founded and endowed with the Land and Rectory before the time of memory, which by the Rules of the Common Law, as has been said, must be before the first Year of *R.* 1. for if by any Records, Deeds, or other legal and good Evidence it can be made appear, that either

either the Land or Rectory came to the Abby since the said first Year of *R.* 1. the union is not perpetual; and yet if the Appropriation be ancient, as in the time of *E.* 4. or before, though the Lands cannot be discharged upon the score of perpetual unity; yet they may by Prescription, if in truth the Lands were held discharged of the payment of Tythe.

Thirdly, Such unity as shall discharge Lands of the payment of Tythes within this Law, must be *æqualis*, that is, the Abbots, Priors, *&c.* must be seised in Fee-simple, as well of the Lands upon which, *&c.* as of the Rectory.

Lastly, Such unity must be *libera*, that is, free from the payment of any manner of Tythes, for if their Farmers at will, years, *&c.* have paid any manner of Tythes to the Abbots, Priors, *&c.* or their Farmers of the Rectories, the perpetual unity will not serve. And therefore where such perpetual unity is pleaded in discharge of Tythes, the adverse party may reply, That the Tenants or Farmers before the dissolution paid some sort of Tythes, and so avoid the perpetual unity. Cro. Jac. 454. Co. 2. 48. a.

Having first given the Reader satisfaction that all the Lands that came to the Crown by the Stat. of 27 *H.* 8. and before, can have no benefit of the discharge given by the Statute of 31 *H.* 8. and having also shewed how many ways Lands may be discharged from payment of Tythes that came to the Crown by the said Statute of 31 *H.* 8. It rests now that I should say some-

something of those Lands that have since come to the Crown by the Statutes of 32 *H.* 8. *cap.* 24. 37 *H.* 8. *cap.* 4. and 1 *E.* 6. *cap* 14.

Co. 2. 47. a. *How other Lands stand that came not to the Crown by* 31 H. 8.

It is a Rule taken in the Archbishop of *Canterburies* Case, that neither the letter nor the meaning of the Statute of 31 *H.* 8. extended to free or discharge any Lands from the payment of Tythes, save those that came to the Crown by that Act; for as that Book says, it is absurd that the branch of the Statute of 31 *H.* 8. concerning Tythes, should be extended to a future Act, that the makers of the Statute of 31 *H.* 8. without the Spirit of Prophesie, could not have the prescience of.

More 913. Cro. Jac. 57. Hill. 2 Jac.

And as to those that came to the Crown by the Statute of 32 *H.* 8. *c.* 24. it was adjudged in the Case of *Spurling* and *Quarles*, that they are not discharged of the payment of Tythes.

And after in the Case between *Urry* and *Bowyer* 8 *Jacobi* in the Common Pleas this point was moved again, and the Court was divided.

Jones 192. &c. Latch 89. Hughes 392. Bridgm. 32.

But there is a latter Judgment that seems to oppose these former resolutions, it was between one *Witton* and Sir *Richard Weston*, that was afterwards Lord Treasurer, *Trin.* 14 *Car.* 1. B. R. and the Question was, whether those Lands of the Hospitaliers that came to the Crown by the Statute of 32 *H.* 8. *cap.* 24. were discharged of the payment of Tythes by that Statute of 32 *H.* 8. or by the former Statute of 31. and in that Case *Dodridge* and *Jones* Justices, held that they

they were discharged within the Statute of 31 *H.* 8. and they did in effect deny the Books before cited to be Law; the Chief Justice *Hide* was of Opinion, that they were not discharged by the Statute of 31 *H.* 8. but by that of 32. So that by their three Opinions the Defendant Sir *Richard Weston* had Judgment; but *Whitlock* was of Opinion, That those Lands were not discharged of the payment of Tythes by the one Statute or the other: Now upon the whole matter I shall submit to the Judicious Readers Judgment, whether this latter resolution be of any weight to shake the former resolutions, since in this case though there were three for giving Judgment for the Defendant, yet to the point controverted upon the Statute of 31 *H.* 8. there were two against two, and that they were not discharged by the Statute of 32. there were three against the Chief Justice *Hide*. So that I conceive the Law remains according to the former resolutions, That there are no Lands freed from the payment of Tythes by any Statute, but those that come to the Crown by the Statute of 31 *H.* 8. *tamen inde quære.*

If an Abbot, Prior, *&c.* that by Order, Prescription, *&c.* held his Land discharged of the payment of Tythes, had granted away his Land to a Colledge, *&c.* the Colledge should not hold them discharged. Syderfin 320.

I must confess I have met with no Judgments upon those Lands which came to the Crown by the Statute of 37 *H.* 8. but

those being the same with those that came to the Crown by the Statute of 1 *E.* 6. *c.* 14. I conceive neither those that came to the Crown by either of those latter Statutes have any priviledge at all; and it is agreed in that very case of *Witton* and *Weston*, that those Lands that came to the Crown by 1 *E.* 6. could not have any benefit by the clause of discharge in the Statute of 31 *H.* 8.

Jones 185.: Co. 2. 47. a.

So that I shall conclude, that there is no Land can have any priviledge at this day to be discharged of Tythes that belonged to the Abbots, Priors, *&c.* but such only as came to the Crown by the Statute of 31 *H.* 8. *cap.* 13.

CHAP. XXII.

The Two and Twentieth Chapter shews, what Personal Tythes are, and in what manner they are payable.

THE Canonists define Personal Tythes thus.

Lindwood cap. Quoniam propter verb. decimæ personales.

Decimæ personales sic dictæ, quia potius in respectu personæ solvuntur quam rei, ut puta de artificio, negotiatione & militia. And by the Canon,

What Personal Tythes are, and where payable. The Canon.

Decimæ personales solvantur de artificibus & Mercatoribus, scilicet de lucro negotiationis, similiter

militer de carpentariis, fabris cæmentariis, textoribus, pandoxatricibus, & omnibus aliis operariis ſtipendiariis, ut videlicet dent decimas de ſtipendiis ſuis, niſi ſtipendiarii ipſi aliquid certum velint dare ad opus vel ad lumen Eccleſiæ, ſi Rectori ipſius Eccleſiæ placuerit. Verbo negotiationis.

And Mr. *Lindwood* in his Gloſs adds,

Et ſcias quod in iſtis decimis mere perſonalibus, quæ conſiderantur ex ſolo lucro, deducuntur expenſæ tam in re quam circa rem & extra rem factæ. Et nota, quod de ſolo lucro debetur hæc decima; unde ſi emens mercem eam non vendat, ſed donet vel ſibi retineat, non tenetur decimare, quia non lucratur.

So that it appears by the Canon Law, that every one ought to pay for a perſonal Tythe a tenth part of all his clear gains, deducting his charges and expenſes for a perſonal Tythe; but if a Man buy Merchandizes, and do not ſell them to profit, or give them, or make uſe of them himſelf no Tythe is to be paid, becauſe there is no gain made of them.

Now let us ſee what the Statute of 2 *E.* 6. ſays to us concerning perſonal Tythes; and by that Statute it is Enacted. 2 E. 6. c. 13.

That every perſon exerciſing merchandizing, bargaining and ſelling, clothing, Handicraft, or other art or faculty, being ſuch kind of perſons, as then before within forty years had accuſtomably uſed to pay ſuch perſonal Tythes, or of right ought to pay (other than ſuch as be common Day-Labourers) ſhall yearly pay for his perſonal Tythes, the tenth part of his clear gains, his charges deducted. The Statute for Perſonal Tythes.

And where handycraft men have used to pay their Tythes within this forty years, the same Custom of Tythes is to be observed; and if any person refuse to pay his personal Tythes, &c. *it shall be lawful to the Ordinary of the same Diocess to call the same Party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the Parties own corporal Oath concerning the true payment of the said Tythes.*

This Act of Parliament restrains the Canon Law in two things; first, where the Canon was general, that all persons in all places should pay their personal Tythes, the Act restrains it to such kind of persons only as have accustomably used to pay the same within forty Years before the making of the Act. Secondly, whereas by the Ecclesiastical Laws they might before this Act have examined the Party upon his Oath concerning his gain; this Act restrains that course, so that the Party cannot be examined upon Oath; and by this Act the Day-Labourer is freed of the payment of his personal Tythes.

It cannot be intended upon this Act, that if such Tythes have been sometimes paid within forty Years, that they are therefore due, but they must have been accustomably, that is, constantly paid for forty Years, next before the Act.

And if it be demanded how such payment must now be proved forty Years before the making of the said Act? I Answer, as in other like cases *a posteriore*, by what has

has been done all the time of memory since the Act.

There has been some question amongst the School-Men and Canonists, whether personal Tythes ought to be paid of unlawful gain, to which you shall hear what a great School-Man and Doctor says.

Quod si aliqua male acquiruntur dupliciter uno modo, quia ipsa acquisitio est injusta, puta quæ acquiruntur per rapinam, furtum seu usuram, quæ homo tenetur restituere, non autem de eis decimam dare, tamen si aliquis ager sit emptus de usura, de fructu ejus tenetur usurarius decimas dare, quia fructus illi non sunt de usura, sed ex Dei munere: quædam vero dicuntur male acquisita, quia acquiruntur ex turpi causa, sicut de meritricio & histrionatu, & aliis hujusmodi, quæ non tenentur restituere unde de talibus tenentur decimas dare, secundum modum aliarum personalium decimarum, tamen Ecclesia non debet eas recipere, quamdiu sunt in peccato, ne videatur eorum peccatis communicare, sed postquam pœnituerint, possunt ab eis de his recipi decimæ.

Tho. Aquinas Sum. 2. 2.æ q. 87. art. 20. *whether due of ill gotten profit.*

So that by this great Doctors Opinion it seems, that of ill gotten gain, of which restitution ought to be made, no personal Tythe is due; and yet if by ill gotten gain a Field be purchased, Tythe ought to be paid of the Fruits thereof: but of ill gotten gain where no restitution is to be made, there Tythes ought to be paid, but not received by the Chuch till the Sinner have repented him of the evil, and after such repentance the Church may receive them.

Lindwood cap. Quoniam propter verb. Injuste acquisit. *In the Glos*, & Greg. decret. cap. ex transmissa *in the Glos* verbo Injuste.

These personal Tythes are accounted amongst the Offerings, of which we are to speak next, and ought by the Parishioner to be offered to the Church where due; but I am of the Opinion of him, that said, *Hæ decimæ personales magis difficultate & subtilitate quam utilitate existunt.*

Rolls 1. 646. a. 1. It hath been resolved, that Servants in Husbandry shall not pay any personal Tythe.

Hawking, Hunting, Fishing, Fowling, &c. fall under these Rules of Personal Tythes.

CHAP. XXIII.

The Twenty third Chapter shews, what Oblations, Offerings, &c. *are, and where due.*

Oblations and Offerings what, and where due.

OFferings are defined by the Canonists to be,

Quæcunque a piis, fidelibus Christianis offeruntur Deo & Sanctæ Ecclesiæ, sive res soli, sive mobiles sint, nec refert an legantur Testamento, aut aliter donentur.

It should seem, that in the time of Popery there was an expectation, that every one present at Mass should offer something; for St. *Gregory* tells us, *Quod omnis Christianus procuret ad missarum solennia aliquid Deo offerre.*

Greg. 78. habetur de Consecrat. div. 1. Can. 4.

And

And by a Canon in the Council *Matisc.* it is decreed, *ut omnibus dominicis diebus altaris oblatio ab omnibus viris & mulieribus offeratur, tam panis quam vini, ut per has immolationes,* &c.

But *Becanus* a learned Jesuit is more moderate; for he tells us, *Quod nemo tenetur ad illas Oblationes, nisi vel necessariæ sint ad sustentationem ministrorum, vel consuetudo ad eas alicubi obliget.* Becan. Sum. Theol. 3. q. 86.

And these Offerings belonged properly the Priest or Minister of the Church or Place where they were made; for so is the Canon of Pope *Damasus.* Can. Damas. Pap. Et habetur 10. q. 1.

Quod Oblationes quæ intra sanctam Ecclesiam offeruntur, tantummodo Sacerdotibus qui quotidie servire videntur, licet comedere & habere, &c.

But it should seem, that private Chappels carried away many of the Offerings belonging to the Mother Churches; to avoid which *Othobon* the Popes Legate here made a Canon to remedy that mischief to this purpose,

Quod Capellani ministrantes in Capellis hujusmodi, quæ salvo jure matricis Ecclesiæ sunt concessæ, universas Oblationes & cætera quæ ipsis non recipientibus ad Ecclesiam matricem provenire deberent, ipsius Ecclesiæ Rectori sine difficultate restituant, cum illud tanquam alienum, juste nequeant retinere. Si quis autem restituere contempserit, suspensionis vinculo, quousque restituerit, se noverit innodatum. Cap. de Oblationibus.

So that it seems by this Canon, that Chappels that had Parochial Rights, the Chaplains of them might retain the Offerings; but where the Parochial Rights were saved to the Mother Church, the Chaplains of such Chappels were to account to the Rector of the Mother Church for the Offerings made at such Chappels.

Cap. Quia quidam maledictionis, &c.

There was another Canon made by *Simon Mepham* Archbishop of *Canterbury*, and his Clergy in the year of our Lord 1328. reciting,

Quia quidam maledictionis filii in nubentium solennis, purificationibus mulierum, mortuorum exequiis, & aliis, in quibus ipse dominus in ministrorum suorum personis solebat oblationum libamine populariter honorari, ad unius Denarii, vel alterius modicæ quantitatis oblationem, populi devotionem restringere sunt moliti, residuum oblationis fidelium suis pro libito, vel alienis usibus multoties applicantes: Præsentis declaratione Consilii declaramus & pronunciamus, omnes & singulos in præmissis, vel eorum aliquo imposterum delinquentes, vinculo majoris excommunicationis involvi.

So that upon the whole matter it appears, there were some Offerings free and voluntary, which the Parishioners or others were not bound to perform, but *ad libitum*. There were others by Custom certain and obligatory, as those for Marriages, Christnings, Churching of Women, Burials, &c. and that these were all due, and belonged to the Parish Priest or Minister, that officiated

ciated at the Mother Church or Chappel, that had Parochial Rights; the other Chappels that had not Parochial Rights, were to account to the Rector for the Parish Church: Now let us see what the Statute of 2 *E.* 6. says, by which it is enacted,

2 E. 6. c. 13. *The Statute for Offerings.*

That all and every Person and Persons, which by the Laws and Customs of this Realm ought to make or pay their Offerings, shall yearly from thenceforth well and truly content or pay his or their Offerings to the Parson, &c. *of the Parish or Parishes, where it shall fortune or happen him or them to dwell or abide,* &c.

These Offerings which were free and voluntary are now vanished, and are not comprehended within this Law; but those that were customary and certain, as for Communicants, Marriages, Christnings, Churching of Women and Burials, are confirmed to the Parish Priest, Vicars and Curates of the Parishes, where the Parties live that ought to pay the same; and they are only recoverable in the Spiritual Court; or an Action (I conceive) may be formed upon this Statute at Common Law.

CHAP.

CHAP. XXIV.

The Twenty Fourth Chapter shews, what Mortuaries are, and in what Cases they are due at this day, and how much is to be paid for the same.

where, and what is due for Mortuaries.

BY a Provincial Canon made by *Simon Langham* Arcbishop of *Canterbury* and his Clergy, in the year of our Lord 1378. it was decreed,

Cap. Statutum & infra, &c. *The Canon.*

Quod si decedens tria vel plura cujuscunque generis in bonis suis habuerit animalia, optimo cui debitum de jure fuerit reservato: Ecclesiæ suæ, a qua Sacramenta recepit, dum viverit, sine dolo fraude seu contradictione qualibet pro recompensatione subtractionis decimarum personalium, nec non & oblationum, secundum melius animal reservetur post obitum pro salute animæ suæ Ecclesiæ suæ hujusmodi liberandum: quod si duo tantum in bonis decedentis extiterint animalia, de mansuetudine Ecclesiæ exactio quælibet nomine mortuarii remittatur: quodque si Mulier viro superstite obierit, ad solutionem mortuarii minime coerceatur; Sed si post obitum mariti, in domo cum familiæ regimine vidua per annum supervixerit, juxta formam superius scriptam ad mortuarium obligetur: Hac autem interpretatione, consuetudini laudabili super mortuariis in nostra provincia aliter observare nolumus præjudicium generali; quin si decedens numerum hujusmodi animalium habuerit seu non habuerit virve aut

uxor

uxor prius vel poſt deceſſerit, ſuper præſtatione mortuarii conſuetudo Eccleſiaſtica obſervetur; ad ſolutionem autem debiti de jure vel conſuetudine mortuarii renuentes, volumus per ordinarios locorum cenſura Eccleſiaſtica coarctari.

How far this Canon was obeyed in *England* I can give no account, but I have not found the Engliſh willing to have their Eſtates taken from them by Canons, nor have found that any Prohibitions have been granted in caſe of Mortuaries; nor have I obſerved any Complaints in Parliament againſt them (ſave that in the time of 2 *R.* 2. it is prayed that Parſons and Vicars might not require Mortuaries of the Armour of any Man; but that it might remain to their Executors) till the 21 *H.* 8. and then they were ſetled by the Statute as follows,

St. 21 H. 8. c. 6. *The Statute of Mortuaries.*

1. *That no Man ſhould pay a Mortuary unleſs he died poſſeſſed of Goods to the value of ten Marks, that is, ſix pounds thirteen ſhillings and four pence.*

2. *That no Mortuary ſhould be paid or demanded, but in ſuch places where they have uſed to be paid or given.*

3. *That they ſhould be paid but in one place, and that at the Parties moſt uſual dwelling and habitation, and there but one Mortuary, and that after the rate following, that is to ſay,*

4. *That if the decedent at the time of his death, had in moveable Goods to the value of ten Marks clearly, his Debts firſt paid, and under*

under the Sum of thirty pounds, then he ſhould pay three ſhillings and four pence and no more, and this muſt be in moveables, and not in Chattels, as Leaſes for years, &c.

5. *That if the decedent died poſſeſſed of moveables of the value of thirty pounds, and under the value of forty pounds, to pay ſix ſhillings and eight pence for a Mortuary.*

6. *If the decedents Goods be of the value of forty pounds or upwards, then to pay ten ſhillings for a Mortuary.*

7. *That no married Woman, Child, or Perſon not keeping Houſe ſhould pay any Mortuary, nor a wayfaring Man, or other that was not reſident where he died, but thoſe to pay where they were laſt reſident.*

8. *The Parſon or Vicar are not by this Act barred of any Legacy given, or Offering to be made to them.*

9. *No Mortuary to be paid in* Wales, Calis *or* Barwick, *or in the Marches of* Wales, *but where accuſtomed.*

10. *It is provided that the four* Welch *Biſhops, and the Archdeacon of* Cheſter *may, notwithſtanding this Act, take their accuſtomed Mortuaries.*

11. *That where leſs hath accuſtomably been taken for Mortuaries than is limited by the Act, there no more than is due by the Cuſtom ſhall be taken.*

2 Inſt. 491. *Mortuaries due only by Cuſtom.*

Sir *Edward Coke* is of Opinion that there were no Mortuaries due before this Act by any Law, but by Cuſtom only; by reaſon of the words in the Statute of *Circumſpecte Agatis*, which are, *ubi mortuarium dare conſuevit*, &c.

This

This duty was formerly only ſuable for in the Court Chriſtian, but now I conceive an Action of Debt will lie at Common Law upon this Statute, for though this Statute is only negative, that they ſhall not take above ſuch Rates, yet it implies an affirmative, as the Statute of 2 *E.* 6. for barren Grounds, and the Statute for the Sheriffs Fees and other Statutes.

But if a Suit be commenced for a Mortuary in the Spiritual Court, no Prohibition ſhall be granted to ſtay their Proceeding there, unleſs they proceed contrary to the Statute. Jeoffries verſ. Wood. Hill. 22, and 23 Car. 2. B. R.

For thoſe Mortuaries that Prelates anciently paid to the Kings of this Realm, I ſhall not trouble the Reader, but refer thoſe that are curious to inform themſelves, to Sir *Edward Coke*'s Commentary upon *Magna Charta*, and his Juriſdiction of Courts. *Mortuaries to the King by Biſhops.* 2 Inſt. 491. 4 Inſt. 338.

In the 10th of *H.* 4. A Vicar claimed a Mortuary by Cuſtom, and not by the Canon, or any other Law, *quod nota.* 10 H. 4. 1. b.

Theſe Mortuaries are in ſome places called coarſe Preſents, or courſe Preſentees, as Doctor *Cowel* ſays, becauſe where due, they uſed to pay them before the Coarſe was buried, when it was brought to be buried. *Their Names.*

The Biſhop of *Cheſter* claimed by Cuſtom upon the death of any Prieſt, dying within the Archdeaconry of *Cheſter* for a Mortuary, his beſt Horſe or Mare, Saddle, Bridle and Spurs, his beſt Gown, a Cloak, his upper Garment next it, his beſt Hat, his Tippet, his beſt Signet or Ring, and Cro. Car. 237, 238. *Biſhop of Cheſter his demand as Archdeacon of Cheſter.*

and this Custom was denied by the Plaintiff in a Prohibition, but what the Success was I have not heard; but the Mortuaries due to the Archdeacon of *Chester* are excepted; and the Bishop of *Chester* holds that Ardeaconry, as I have been informed, in the nature of a *Commendam*, and executes it by a Deputy.

Office of Executor. Lib. 6. §. 16.

Mr. *Swinborn* is of Opinion, that these Mortuaries are to be paid out of the decedents part of the personal Estate where the Wife and Children are to have their reasonable part, the reason he gives is because Mortuaries are of the nature of Legacies. But I must confess I am not of his Opinion, for I look upon it as a Debt or Duty to which the personal Estate is subject.

CHAP. XXV.

The Five and Twentieth Chapter shews, how Tythes are to be paid in London.

Tythes in London, *how to be paid.*

THE Livelyhood of the Clergy in *London*, I mean the secular Clergy, consisted heretofore chiefly in voluntary Offerings and personal Tythes, which little differ from voluntary Offerings. For though a great Doctor tells us that,

Hostiensis c. *Omnis Christianus.*

In præcipuis festivitatibus tenetur quis offerre, & cogi potest, maxime cum sit quasi generalis consuetudo ubique terrarum, &c.

And

And if you ask him which are those Feasts at which the People are bound to offer, he tells you, *Dies dominicos, & dies festivos.* Idem de Fa. roc. Sect. In quibus, &c.

But there being no Canon or Law that prescribes any certainty in the quantity, value or things to be offered, I can give them no properer a name than voluntary or free will offerings. But no sooner was Popery abolished in this Nation, but these voluntary Offerings and personal Tythes soon came to little. And notwithstanding it was enacted by the Statute of 2 *E.* 6. That all that by Law or Custom were bound to make their Offerings should thenceforth pay them to the Parson, *&c.* yet that did not much amend the matter, so that the maintenance of the Secular Clergy in *London* was brought to a very low ebb, there being no Tythe, as hath been said, chargeable upon Houses, unless by way of a *Modus decimandi*, whereupon the Clergy of *London* in the 37*th* year of the Reign of King *H.* 8. made their application to the Parliament, and obtained an Act of Parliament for the confirming a Decree made by the Arcbishop of *Canterbury* and divers other great Lords of the Kingdom, to settle the matter, the effect whereof follows, which is printed amongst the other Acts of Parliament. Stat. 37 H. 8. c. 12.

1. *That the Citizens of* London *from thenceforth for ever, should pay yearly without fraud or guile to their Parsons*, &c. *for the time being, for every ten shillings rent of all Houses,* The Decree.

Houſes, Shops, Warehouſes, Cellars and Stables, within the ſaid City of London *and the Liberties of the ſame,* 16 d. ob. *and for every* 20 s. *Rent* 2 s. 9 d. *and ſo aſcending for every* 10 s. *Rent.*

2. *That if any Dwelling Houſes, Shops,* &c. *ſhould be leaſed by fraud or covin, reſerving leſs Rent than hath been accuſtomed; or ſhall by reaſon of Fine, or by fraud or covin, make any Leaſe without reſerving any Rent, than the Farmer or Tenant ſhall pay after the ſame rate, the ſaid Houſe,* &c. *was laſt let for without covin; but note, that if the Houſe,* &c. *be let at as great a Rent, as the ſame was ſet at the time of the making of the ſaid Statute, then no fraud can be averred, although a Fine or Incom was given for the ſaid Leaſe.*

2 Inſt. 659. 3. *That if a Houſe,* &c. *be leaſed, and no Rent at all reſerved, then ſuch Houſe,* &c. *ſhall pay ſuch rate as the ſame was let for at the time of the making of the ſaid Statute; but where greater Rent is reſerved, it is to pay according to the beſt improved value.*

2 Inſt. 660. Lit. Rep. 141. ib. *But where Houſes had been always held by the Owners, and by conſequence, no Rent paid, that is* caſus omiſſus *in this Statute, and ſuch Houſes will be freed of payment of Tythes by this Law.*

Lit. Rep. ubi ſupra. *But if it were a Houſe, that yielded Rent at the time of the making the Decree, and be now let without Rent, it ſhall pay Tythe according to the Rate it was ſet for at the making of the Decree, although no Fine at all were paid for ſuch Leaſe.*

5. *The*

5. *The Tythes upon this Decree cannot be ſued for in the Eccleſiaſtical Court, becauſe the Act it ſelf declares how they ſhall be recovered.*

6. *That if the Owners held the Houſes themſelves, then they ſhall pay Tythe after the rate the ſame were ſet for at the time of the Decree.*

7. *That if any perſon take any Houſe,* &c. *by Leaſe, and he and his Executors,* &c. *live in part of it, and ſet out part, the principal Farmer or Taker, his Executors,* &c. *ſhall pay their Tythes for his and their parts after the rate aforeſaid, and of ſuch parts as is farmed out according to the rate it is ſet at. And in the ſame manner Tythes are to be paid, where one takes a Leaſe of ſeveral Houſes, and lets out part, and holds any part himſelf.*

8. *That if any Farmer, or his Aſſigns ſhall farm all the Houſes,* &c. *ſo farmed to one or divers Tenants, the Tenants ſhall pay Tythes according to the Rent reſerved.*

9. *That if Dwelling Houſes ſhall be converted into Warehouſes, or* e converſo, *yet they ſhall pay Tythe according to the Rate aforeſaid.*

10. *That if a Dye-houſe or Brew-houſe be let with the Implements, then a third peny of the Tythes after the rate aboveſaid to be abated.*

11. *That where a Manſion-houſe with Shops, Stables, Wharfs with Crane, Timber-yard or Gardens belonging to the ſame, and occupied together ſhall afterwards be ſevered, or were ſevered within eight years before the Decree, that then the Farmers of the Shops, Stables,* &c. *ſhall pay Tythes according to the Rate aboveſaid.*

12. *That these Tythes shall be paid quarterly at* Easter, Midsummer, Michaelmas *and* Christmas.

13. *That any Housholder, that holds an House of* 10 s. *Rent, or above, shall be acquit of his Offerings; but his Wife, Children and Servants shall pay* 2 d. *yearly for their four Offering days receiving at Easter.*

14. *That if any House of* 10 s. *Rent or above, shall be let by parcels under* 10 s. *Rent, then the Owner, if he live in any part of the House, or the chief Tenant, shall pay the Tythe after the rate as the same House was accustomably letten before such division, and the Subtenants, that hold less than* 10 s. per annum, *without fraud or covin shall pay* 2 d. *yearly for their Offerings.*

15. *That no Tythe shall be paid for any Gardens belonging to any Mansion-house, and which are held for pleasure; but if such Garden contain half an Acre of Ground or more, and shall make any yearly profit by Sale, then the same to be paid for, according to the rate aboveſaid.*

16. *This Act is not to extend to the Houses of Noblemen or Noblewomen whilst they are kept in their own hands, and not let for Rent, and which formerly paid no Tythe, so long as the same continue unletten, nor to the Halls of any Craft or Companies so long as the same are unletten, and in times past paid no Tythes.*

17. *That Sheds, Stables, Cellars, Timber-yards and Tenter-yards, which never were parcel of, or belonging to any Dwelling-house, and which have not been used to pay Tythes, shall be*

be acquit of the payment of Tythes, as hath been accuſtomed.

18. *But if by Cuſtom any leſſer Rate have been paid than the Rate of* 2 s. *and* 9 d. *in the pound, then the accuſtomed Rate only to be paid.*

19. *The Lord Mayor of the City of* London, *by the Advice of Council is authorized by the ſaid Act, to hear and determine all differences ariſing upon this Decree, and give Coſts according to the intent thereof.*

20. *That if the Mayor do not make an end, of ſuch differences within two Months after complaint; or if any perſon find himſelf aggrieved by his Decree, then the Lord Chancellor within three Months after complaint to him made, ſhall make an end of the differences with coſts,* &c.

21. *That if Rents fall by reaſon of decay or burning, to leſs than they were accuſtomably letten, That then the Tythes during ſuch Term, ſhall be paid according to the Rent reſerved.*

This is a ſhort abſtract of that great Decree which I have inſerted here for the uſe of the Clergy of that City: I ſhall only add ſome other reſolutions upon this Decree, and conclude this Chapter.

In a Caſe between Dr. *Meadhouſe* and Dr. *Taylor* it was reſolved, that Suits for Tythes upon this Decree ſhould be before the Mayor in Writing, and not by Parol. Noy 130. *where Suits for Tythes in* London *ſhall be determined.*

2. That a Reſervation by a Leſſor for Life upon a Leaſe by him made for years, ſhall not bind him in Reverſion to pay Tythes according to that rate.

3. That a Rent for half a year, and after for another half year is a yearly Rent within this Decree.

Cro. El. 276. More 912.

It hath been resolved that Abby-Lands within the City of *London* and the Liberties thereof are not freed from the payment of Tythes within the Statute of 31 *H.* 8. because the Statute and Decree for the payment of Tythes within the City and Liberties of *London* was made after the Statute of 31 *H.* 8. and their Priviledges are not reserved.

Vers. Scudamore. 5 Jac. C. B. Cro. Jac. 6. 613.

It hath been resolved that if the Rents be continued as they were at the time of the making of the Statute, though upon new Fines, that the Tythes shall be paid accordingly. But if upon new Fines less Rent be reserved it shall pay Tythes as it did before.

And if no Rent be reserved, nor Fine paid; the Parson shall have his Tythes according to the Rent at the time of the Decree.

But if an House have always been held by the Owners, and no Rent paid, it shall pay no Tythes within the Decree.

The Decree was inrolled 5 *Martii* 38 *H.* 8. although the Inrolment cannot be found.

And it was resolved that if the Mayor of *London* shall make any Decree against Law, a Prohibition lies; for the exposition of all Acts of Parliament belongs to the Judges of the Common Law.

And

And it hath been resolved that though an House in *London* stand void without any Tenant at all, that yet notwithstanding it shall answer Tythes to the Parson. *Dr.* Burges *Parson St.* Magnes *vers.* Symonds. Scaccar. M. 4 Car. 1. per Henden.

And it hath been resolved that if any Suit be brought in the Ecclesiastical Court, or any other Court than is directed by the Act, a Prohibition lies. 2 Inst. 660.

Lastly, Where the Decree says (where no Rent is reserved by reason of any Fine or Income paid before-hand) that is put only for Example, for if no Rent be reserved for this, or any other cause or consideration, it is within the meaning of this Clause.

But if any Tythe in *London* be due by Custom, they may be sued for in the Exchequer, nothwithstanding the Statute. Littl. Rep. 102.

And it was held by the Court of Exchequer that that Court has Jurisdiction for Tythes in *London* upon this Statute, because there is no negative restrictive words in the Statute. Hardres 116.

I cannot tell by what improvidence I mist in all my former Editions of this Book, taking notice of an Act of Parliament made in the 22th and 23th of King *Charles* the Second, for the better settlement of the Maintainance of the Parsons, Vicars and Curates in the Parishes of the City of *London*, burnt by the late dreadfull Fire there, which is a Law very necessary to be known, by which it is Enacted, *That the annual certain Tythes of all and every Parish and Parishes within the said City of* London *and the Liberties thereof, whose* An Act of Parliament for setling Maintenance upon Ministers of the Churches that were burnt in *London*.

Churches have been demolished or in part consumed by the late Fire, and which Parishes by vertue of an Act of this present Parliament, Intituled An Additional Act for the Re-building the City of *London*, Uniting of Parishes, and Re building of the Cathedral and Parochial Churches within the City of *London*, remain and continue single as heretofore they were or are by the said Act Annexed or United into one Parish respectively, shall be as follows, *that is to say, The annual certain Tythes or Sums of Mony in lieu of Tythes.*

	l.	s.	d.
Of the Parish of Alhallows Lombard-Street	110	00	0
Of St. Bartholomew Exchange	100	00	0
Of St. Bridget *alias* Brides	120	00	0
Of St. Bennet Finck	100	00	0
Of St. Michael Crooked Lane	100	00	0
Of St. Christopher	120	00	0
Of St Dionis Back-Church	120	00	0
Of St. Dunstan *in the East*	200	00	0
Of St. James Garlick-hithe	100	00	0
Of St. Michael Cornhil	140	00	0
Of St. Michael Bassishaw	132	11	0
Of St. Margaret Lothbury	100	00	0
Of St. Mary Aldermanbury	150	00	0
Of St. Martin Ludgate	160	00	0
Of St. Peter Cornhil	110	00	0
Of St Stephen Coleman-street	110	00	0
Of St. Sepulchre	200	00	0
Of Alhallows Bred-street *and St.* John Evangalist	140	00	0
Of Alhallows *the Great and* Alhallows *the Less*	200	00	0

Of

	l.	s.	d.
Of St. Alban Wood-ſtreet *and St.* Olave Silver-ſtreet	170	00	0
Of St. Ann *and* Agnes *and St.* John Zachary	140	00	0
Of St. Auguſtine *and St.* Faith	172	00	0
Of St. Andrew Wardrobe *and St.* Anne Black-Friars	140	00	0
Of St. Antholin *and St.* John Baptiſt	120	00	0
Of St. Bennet Grace-Church *and St.* Leonard Eaſt-Cheap	140	00	0
Of St. Bennet Pauls-Wharf *and St.* Peters Pauls-Wharf	100	00	0
Of Chriſt-Church *and St.* Leonard Foſter-Lane	200	00	0
Of St. Edmond the King *and St.* Nicholas Acons	180	00	0
Of St. George Botolph-Lane *and St.* Botolph Billingſgate	180	00	0
Of St. Lawrence Jury *and St.* Magdalen Milk-ſtreet	120	00	0
Of St. Magnus *and St.* Margarets New Fiſh-ſtreet	170	00	0
Of St. Michael Royal *and St.* Martin Vintry	140	00	0
Of St. Mathew Friday-ſtreet *and St.* Peter Cheap	150	00	0
Of St. Margaret Pattens *and St.* Gabriel Fenchurch	120	00	0
Of St. Mary at Hill *and St.* Andrew Hubbard	200	00	0
Of St. Mary Woolnoth *and St.* Mary Woolchurch	160	00	0
Of St. Clement Eaſtcheap *and St.* Martins Orgars	140	00	0

	l.	s.	d.
Of St. Mary Abchurch *and St.* Lawrence Pountny	120	00	0
Of St. Mary Aldermary *and St.* Thomas Apostles	150	00	0
Of St. Mary le Bow, *St.* Pancras Soper Lane *and* Alhallows Hony Lane	200	00	0
Of St. Mildred Poultry *and St.* Mary Cole-Church	170	00	0
Of St. Michael Wood-ſtreet *and St.* Mary Staining	100	00	0
Of St. Mildred Bred-ſtreet *and St.* Margaret Moſes	130	00	0
Of St. Michael Queenhith *and* Trinity	160	00	0
Of St. Magdalen Old Fiſh-ſtreet *and St.* Gregory	120	00	0
Of St. Mary Sommerſet, *and St.* Mary Mounthaw	110	00	0
Of St. Nicholas Coleabby *and St.* Nicholas Olives	130	00	0
Of St. Olive Jewry *and St.* Martin Ironmonger-Lane	120	00	0
Of St. Stephen Walbrook *and St.* Bennet Sherehogg	100	00	0
Of St. Swithin *and St.* Mary Bothaw	140	00	0
Of St. Vedaſt *alias* Foſters *and St.* Michael Quern	160	00	0

Which reſpective Sums of Mony to be paid in lieu of Tythes within the ſaid reſpective Pariſhes and aſſeſt as herein after is directed, ſhall be and continue to be eſteemed, deemed and takin to all intents and purpoſes to be the re-

respective certain annual maintainance (over and above Glebes and Perquisites, Gifts and Bequests to the respective Parson, Vicar and Curate of any Parish for the time being, or to his or their respective Successors, or to other persons for his or their use) of the said respective Parsons, Vicars and Curates, who shall be legally instituted, inducted and admitted into the respective Parishes aforesaid.

By whom and how the said Assessment shall be made.

And that the said several Sums of Mony for Tythes may be more equally assessed upon the several Houses, Buildings and all other Hereditaments whatsoever, within all the said respective Parishes. Be it Enacted, &c. That the Alderman of such respective Ward or Wards within the said City, wherein any of the said Parishes lye, and his and their Deputy and Deputies, and the Common-Council-Men of such respective Ward or Wards, with the Church Wardens and one or more of the Parishioners of such respective Parish wherein the Maintainance aforesaid is respectively to be assest, to be nominated by such respective Alderman, Deputy, Common-Council-Men and Church-Wardens or any five of them, whereof the Alderman or his Deputy to be one, shall at some convenient and seasonable time before the twentieth day of May, *in the year of our Lord, one thousand six hundred seventy one, assemble and meet together in some convenient place within every of the respective Parishes, in such respective Ward wherein the maintainance aforesaid is to be assessed, and they or the major part of them so assembled, shall proportionably assess upon all Houses, Shops, Warehouses and Cellars, Wharfs, Keys, Cranes, Waterhouses (which*

(which Waterhouses shall pay in their respective Parishes where they stand and not elsewhere) and Tofts of ground (remaining unbuilt) and all other Hereditaments whatsoever (except Parsonage and Vicarage Houses) the whole respective Sum by this Act appointed, or so much of it as is more than what each Impropriator is by this Act enjoyned respectively, to allow in the most equal way that the said Assessors according to the best of their Judgments can make it, which said Assessments shall be made and finished before the 24th day of July then next ensuing.

How unequal Assessments shall be relieved.

And be it farther Enacted by the Authority aforesaid, That if any variance or doubt shall happen to arise about any Sum so assest as aforesaid, or that any Parishioner or Parishioners, Owner or Owners of any House, Shop, Warehouse or Cellar, Wharf, Key, Crane, Waterhouse, Toft of Ground or other Hereditament, within any of the said Parishes, shall find himself or themselves aggrieved by the assessing of any Sum or Sums of Mony in manner and form aforesaid, that then upon complaint made by the Party or Parties aggrieved, to the Lord Mayor or Court of Aldermen of the said City, within fourteen days after notice given to the party or patties assest, of such assessment made, to the said Lord Mayor and Court of Aldermen, summoning as well the party or parties aggrieved as the Alderman and such other as made the said assessment, shall hear and determine the same in a summary way, and the Judgment by them given shall be final, and without Appeal.

The Assessment may be reviewed and laid again.

Provided that any assessment or rate to be made or laid by virtue of this Act, shall and may in all or any of the Parishes aforesaid, in like

like manner be reviewed or altered or laid again within three Months after the twenty fourth day of June, 1674. *according to the aforesaid rules, and any such assessment or rate shall or may be again reviewed or re-assest within three Months after the twenty fourth day of* June, *in the year of our Lord,* 1681. *And that all and every such new assessment and rate shall be lyable to the like Appeals as aforesaid, and shall be collected levyed and paid as any other assessment or rate mentioned in this Act may or ought to be.*

How unequal Assessment shall be relieved in default of the Lord Mayor and Court of Aldermen.

And if the said Alderman, Deputy, Common-Council-Men and Parishioner or Parishioners so appointed, as aforesaid, shall, after summons and requeſt made in that behalf unto them, by the Lord Mayor and Court of Aldermen, or the Incumbent or Incumbents of any of the said respective Parish or Parishes, refuse and neglect to meet and make such assessments, as aforesaid, then it shall and may be lawful to and for such person and persons as shall be thereunto authorized and required by the said Lord Mayor and Court of Aldermen to make such assessment as by the said Aldermen, Deputy, Common-Council-Men, Churchwardens, Parishioner or Parishoners aforesaid, should or ought to have been made.

There shall be three several Transcripts of the Assessments, and how to be disposed.

And be it farther Enacted, &c. *That the said Assessors within ten days after such assessment made, and the respective Appeals (if any be) determined, shall make three Transcripts thereof in Parchment, containing the respective Sums to be payable or appointed to be paid out of all and every the Premisses within such respective Parish, and subscribe the same under their*

their Hands, within twenty days after such subscription, as aforesaid, one of the said Transcripts shall be returned to the Lord Mayor of the City of London, *to be kept and preserved by the said Lord Mayor, in and amongst the Records of the said City, for a perpetual Memorial thereof, and another of the said Transcripts shall be returned into the Registry of the Lord Bishop of* London, *to be kept and reserved as aforesaid, and the other of the said Transcripts shall remain and be kept in the Vestry of such respective Parish, for a perpetual Memorial, as aforesaid.*

Where and to whom the said Monies Assest shall be paid.

And for the surer and better payment of the said respective Sums of Mony, so to be assessed and taxed towards the raising of the said maintainance of their respective Parsons, Vicars and Curates of the said respective Parishes, as aforesaid. Be it Enacted, &c. *That all and every such respective Sum and Sums of Mony, so to be assessed and taxed as aforesaid, towards the raising of the said maintainance of the said respective Parsons, Vicars and Curates of the said respective Parishes, shall be paid to the said respective Parsons, Vicars and Curates and their Successors respectively, at the four most usual Feasts (that is to say) at the Annunciation of the blessed Virgin* Mary, *the Nativity of St.* John *Baptist, the Feast of St.* Michael *the Arch Angel, and the Nativity of our Blessed Saviour, or within fourteen days after each of the Feasts aforesaid, by equal payments; the respective payments thereof to begin and commence only from such time and times as the Incumbent or Incumbents of such respective Parish shall begin to Officiate or Preach as Incumbent*

bent or Parſon in the reſpective Church belonging to ſuch reſpective Pariſh, or in ſome other convenient place or places in ſuch reſpective Pariſh or Pariſhes, to be nominated or appointed by the Lord Biſhop of London *for the time being, or by the Archbiſhop of* Canterbury *in any place within his peculiars.*

What Impropriators ſhall pay towards this Charge.

And in any Pariſh or Pariſhes where any Impropriations be, be it enacted, &c. *That all and every the Impropiator or Impropriators of any of the ſaid Pariſhes, ſhall pay and allow what really and* bona fide *they have uſed, and ought to pay and ſatisfie to the reſpective Incumbent of ſuch reſpective Pariſh, at any time before the late Fire, and the ſame ſhall be eſteemed and computed as part of the Maintenance of ſuch Incumbent; notwithſtanding this Act, or any Clauſe, or Matter or thing therein contained.*

The Sums aſſeſſed how to be recovered upon refuſal, &c.

And be it farther enacted, &c. *That if any of the Inhabitants in any of the reſpective Pariſh or Pariſhes as aforeſaid, ſhall, or do refuſe or neglect to pay to the reſpective Incumbents aforeſaid of any of the reſpective Pariſhes, any Sum or Sums of Mony to him reſpectively payable, or appointed to be paid by this Act, or any part thereof, contrary to the true intent and meaning of this Act, (being lawfully demanded at the Houſe or Houſes, Wharf, Key, Crane, Cellar or other Premiſſes whereout the ſame is payable) that then it ſhall and may be lawful to and for the Lord Mayor of the City of* London *for the time being, upon Oath to be made before him of ſuch refuſal or neglect, to give and grant out Warrants for the Officer or perſon appointed to collect the ſame, with*

with the assistance of a Constable in the day time, to levy the same Tythe or Sums of Mony so due, and in arrear and unpaid, by distress and sale of the Goods of the party or parties so refusing or neglecting to pay, restoring to the Owner or Owners the Overplus of such Goods over and above the said arrear of the said Monies so due and unpaid, and the reasonable Charges of making such Distress, which he is to deduct out of the Monies raised by sale of such Goods.

What remedy if the Lord Mayor or Court of Aldermen neglect or refuse to do their Duties.

Provided always, &c. *That in case the Lord Mayor or Court of Aldermen shall refuse or neglect to execute any of the respective powers to them by this Act granted, or to perform all and every such thing related either to the assessing or levying of the respective sums aforesaid, as they are by this Act authorized and required to perform, that then it shall and may be lawful for the said Lord Chancellor, or Lord Keeper of the great Seal of* England *for the time being, or any two or more of the Barons of his Majesty's Court of Exchequer, by Warrant or Warrants under his or their respective Hands and Seals, to do and perform what the said Lord Mayor and Court of Aldermen according to the true intent or meaning of this present Act, might or ought to have done, and by such Warrant either to impower any person or persons to make the respective Assessments as aforesaid, or to authorize the respective Officers or person or persons appointed to collect the Sums aforesaid, to levy the same by distress and sale of the Goods of any person or persons that shall refuse or neglect to pay the same in manner and form aforesaid.*

Provided

Provided always, &c. *That where any of the Parishes within the said City, have since the late Fire, by Death or otherwise, become vacant, the surviving or remaining Incumbent of the other Parish thereto united, or therewith consolidated, shall have and enjoy, and have like remedy to recover the Tythes hereby setled to be paid, as if he had been actually presented, admitted, instituted and inducted into both the said Parishes since the Union and Consolidation thereof.*

Where one of the Incumbents dies his fellow shall have his part.

Provided, That no Court or Judge Ecclesiastical or Temporal, shall hold Plea of, or for any the Sum or Sums of Mony due and owing, or to be paid by vertue of this Act, or any part thereof, other than the persons hereby authorized to have Cognizance thereof: Nor shall it be lawful to or for any Parson, Vicar, Curate or Incumbent to convent or sue any person or persons assest as aforesaid, and refusing or neglecting to pay the same in any Court or Courts, or before any Judge or Judges, other than what are authorized and appointed by this Act for the hearing and determining of the same in manner aforesaid.

These Assessments not to be sued for in any other Court.

Provided always, That it shall and may be lawful to and for the Warden and Minor *Canons of St.* Pauls *Church* London, *Parson and Proprietors of the Rectory of the Parish of St.* Gregory *aforesaid, to receive and enjoy all Tythes, Oblations and Duties arising or growing due within the said Parish in as large and beneficial manner as formerly they have or lawfully might have done, any therein to the contrary notwithstanding.*

The Warden and *Minor* Canons of St. *Pauls* to enjoy the Rectory of St. *Gregory*.

CHAP.

CHAP. XXVI.

The Twenty Sixth Chapter shews, in what Court the Right of Tythes is determinable, and how, and in what manner to be recovered, and in what Cases Prohibitions are usually granted, and how prosecuted and defended.

2 Inst. 661. 490. Seld. Hist. decim. 412. Lamb. *Saxon Laws* 45.

THAT Tythes were anciently determinable the County and Hundred Courts, is asserted both by Sir *Edward Coke* and Mr. *Selden*: And the same appears by the Laws of King *Ethelstan* long before the Conquest; and Mr. *Selden* is of Opinion, that the Bishops Consistory here in *England* was not setled till the time of *William* the Conqueror, who by his Charter commands, *ut nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in Hundredo placita teneant, nec causam quæ ad regimen animarum pertinet ad judicium secularium hominum adducant, sed quicunque secundum leges Episcopales de quacunque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc Episcopus elegerit & nominaverit, veniat, ibique de causa sua respondeat, & non secundum Hudret. sed secundum Canones & Leges Episcopales rectum Deo & Episcopo suo faciat.* And closes thus, *Hoc etiam defendo, ut nullus Laicus homo de legibus, quæ ad Episcopum pertinent se intromittat*; yet notwithstanding, as Mr. *Selden* observes, the Jurisdiction

Seld. 414. Seld. 414, &c.

diction of Tythes was not so setled in the Bishop and Ecclesiastical Courts, but there were Suits for Tythes as well in the Temporal as Ecclesiastical Courts, whereof he gives some Instances. And amongst the Laws of King *H.* 1. I find this Clause, *Si quis rectam decimam superteneat, vadat præpositus Regis & Episcopi & terræ domini cum presbytero, & ingratis auferant; & Ecclesiæ cui pertinebit, reddant, & nonam partem relinquant ei qui decimam dare noluerit.* Leg. H. 1. c. 11. Lamb. 182.

But the Law hath been now long setled that the Ecclesiastical Courts have in some Cases the power to determine the Right of Tythes, and in all Cases to hold Plea for the Subtraction and withholding of Tythes, and confirmed by several Acts of Parliament.

To the first, If a dispute happen between two Parsons, to which of them the Tythes belong, whether to the one by Parochial Right, or the other as a portion belonging to his Rectory by prescription, and both Parsons claim by Presentation under the same Title, so that the Right of Patronage comes not in dispute, the Right of these Tythes shall be determined in the Ecclesiastical Court, and no Prohibition or *Indicavit* shall hinder it, and this Suit in the Ecclesiastical Court is called a Spoliation. 35 H. 6. 30. 38 H. 6. 22. per *Fortescue. Where the Spiritual Court may determine the Right of Tythes.*

And this Jurisdiction is so peculiar and annexed to the Spiritual Courts, That if the one Parson should bring an Action of Tresspas at the Common Law against the other Parson, for the taking or carrying 38 H. 6. 21. 5 H. 5. 40. 14 H. 4. 17. a. b. *where the Temporal Courts have no Jurisdiction of Tythes.*

away Corn or other things set out for Tythe, the Defendant may by way of Plea shew, that the Goods in question were Tythes set forth and severed from the nine parts, and that he is Parson of *Dale*, and that he and all his Predecessors time out of mind have had these Tythes as a Portion which belonged to his Church, and that the Plaintiff being Rector of the Parish where they grew, claims them as his Tythes, and demand Judgment, if the Kings Court will hold Plea; by such Plea the Kings Court shall be ousted of Jurisdiction; but if the dispute in such Action fall out in pleading to be about the bounds of the Parishes, then the Kings Court shall not be ousted of Jurisdiction.

* 5 H. 6. 10.
50 E. 3. 20.
38 E. 3. 6.
39 E. 3. 23.
5 H. 5. 10.
1 H. 6. 5.
44 E. 3. 39.
20 H. 6. 17.
2 H. 4. 15.
31 H. 6. 11.
2 E. 4. 15.

* And so it is, if the question be between the Farmer, Baily or Servant of the one Parson, and the Farmer, Baily, *&c.* of the other, or the other Parson himself; in such Cases, though the dispute does appear to be concerning the Right of Tythes between the Parsons, yet the Court shall not be ousted of the Jurisdiction because they are not both Clergy-Men.

But in all these Cases where the Right of Tythes is in dispute between one Parson and another, in whose Names soever the Suit is in the Spiritual Court, I perceive no Prohibition lies, if both Parsons come in by the same Title of Patronage, so that the Right of Patronage came not in dispute.

And

And I take the Law to be the ſame where the Queſtion ariſes between the Parſon who is Patron, and the Vicar, whether Tythes belong to the Parſon or Vicar. 40 E. 3. 28. 35 H. 6. 39. Noy 147. More 907. Weſt. 2. c. 5.

But where the right of Tythes is controverted between two Clergy-men which come into their Churches by ſeveral Patrons, there in that caſe the Spiritual Court hath not Juriſdiction to determine the right of the Tythes, if they amount to the fourth part of the yearly value of the Church; but the Title is to be determined by Writ of Right of Advowſon of Tythes, as ſhall be ſhewed more at large, when I ſhall come to ſhew in what Caſes the right of Tythes is determinable in the Kings Court. But in that Caſe if the Tythes in queſtion do not amount to the fourth part of the yearly value of the Church, the Eccleſiaſtical Court may determine the right in a Spoliation. Circumſpecte Agatis, Articuli Cleri, c. 2. *where the Spiritual Court cannot determine the right of Tythes.* F.N.B. 37. E

But it ſhould ſeem that if they claim both by one Patron, there, though the whole Tythes come in debate, the Title ſhall be determined in the Spiritual Court by a Suit in the nature of a Spoliation.

But the Juriſdiction of the Eccleſiaſtical Courts to hold Plea for the ſubtraction and with-holding of Tythes, as the ſame hath been very ancient, ſo it hath been confirmed by ſeveral Acts of Parliament, as I ſhall ſhew; the firſt of which is that of *Circumſpecte Agatis* made in the ninth Year of E. 1. by which it is Enacted, That, *Si Rector petat verſus parochianos oblationes &* *Spiritual Juriſdiction confirmed by ſeveral Acts of Parliament.* *By the Statute* de circumſpecte Agatis.

decimas debitas & consuetas; vel si rector petat versus Rectorem de decimis majoribus vel minoribus, dummodo non petatur quarta pars valoris Ecclesiæ; Item si Rector petat mortuarium in partibus ubi mortuarium dari consuevit; Item si prælatus alicujus Ecclesiæ vel advocatus petat a Rectore pensionem sibi debitam, omnes hujusmodi petitiones sunt faciendæ in Foro Ecclesiastico, &c. and concludes *In omnibus prædictis casibus habet Judex Ecclesiasticus cognoscere, Regia prohibitione non obstante.*

That it is an Act of Parliament.
2 Inst. 487.
Seld. Hist. decim. 424.

There hath been some question made whether this were an Act of Parliament or not; but it is proved by Sir *Edward Coke*, by many unanswerable Reasons, to be an Act of Parliament, and so agreed by Mr. *Selden*, and almost all others.

And extends to all England.
2 Inst. 487.

Secondly, admitting it to be an Act of Parliament, it hath been doubted whether it extended farther than to the Diocess of *Norwich*, it seeming to be appropriated by the penning to that Diocess alone; but by the general Opinion of the learned, it extends to all other Diocesses, and *Norwich* is only put by way of Example.

Observations in the penning of it.

And the prudent penning of this Law by our Ancestors deserves the Readers Observation, how careful they were to preserve their own Rights, and avoid the incroachments of the Clergy, who were in those days very powerful: for first, they would not give way to the Canons to destroy their Customs and Prescriptions allowed by the Common Law, and therefore give the Spiritual Judge Jurisdiction of Tythes and Oblations (*debitas & consuetas*) only.

2. They

2. They would not expoſe their Rights of Patronage to the determination of the Spiritual Judge, and therefore this condition is annexed, *Dummodo non petatur quarta pars valoris Eccleſiæ.*

3. Laſtly, they would not ſubject themſelves to pay Mortuaries according to the Canon Law, but *ubi dare conſuevit*; ſo that if any Suit were ſued for Tythes, Offerings, Mortuaries, not due as well by Cuſtom as Common Law, a Prohibition lay and doth lie at this day.

The ſecond Statute concerning the Juriſdiction of the Spiritual Courts in caſe of Tythes, is the Statute of *Articuli Cleri*, but I ſhall paſs it by here till I come to ſpeak of the Writ of *Indicavit.*

The next Statute I meet with that concerns this matter, is the Statute of 18 *E.* 3. *cap.* 7. which I ſhall paſs by alſo till I come to the determination of the right of Tythes by *Scire Facias.* 18 E.3. cap.7.

There was another Statute made 1 *R.* 2. it is *cap.* 13. for the puniſhing of ſuch as indicted thoſe that ſued in the Spiritual Courts for ſubtraction of Tythes, or compelled them to deſiſt by Bonds or otherwiſe; but that Law being now become obſolete, and beſides my purpoſe, I ſhall proceed to the Statute of 27 *H.* 8. by which it is Enacted, 1 R.2. cap.13.

That Every Subject of England, Ireland, Wales, Callais, *and the Marches of the ſame ſhould according to the Eccleſiaſtical Laws and Ordinances of the Church of* England, *and after the laudable Uſages and Cuſtoms of the* 27 H.8. c. 20

Parishes or other places where he dwells or occupies, shall yield and pay his Tythes and Offerings, and other Duties of holy Church; and that for Substraction of such Tythes, &c. may by due Process of the Kings Ecclesiastical Law, convent the Person, &c. so offending, before his Ordinary or other competent Judge, &c. having Authority to hear and determine the Right of Tythes, &c. And to compel the Party offending to do and yield their Duties in that behalf. And in case the Ordinary &c. *for any Contempt, Contumacy, Disobedience, or other Misdemeanour of the Party Defendant shall make information to any of the Kings most Honourable Council, or the Justices of the Peace of the Shire where the Offender dwells, to assist and aid the Ordinary, &c. and to order and reform any such Person, in any Cause before rehearsed, that then he of the Kings Council, or such two Justices of the Peace, whereof one to be of the* Quorum, *to whom such Information or Request shall be made, shall have power to attach, or cause to be attached the Person, or, &c. against whom such Information shall be made, and to commit the same Persons to Ward, there to remain without Bail or Mainprise until he, &c. shall have found sufficient Surety to be bound by Recognizance or otherwise, before the Kings Councellor, or, &c. or any other like Councellors, or Justices, &c. to the use of the King, to give due Obedience to the Process and Proceedings, Decrees and Sentence of the Ecclesiastical Court wherein such Suit, &c. shall depend or be. And farther gives power to the said Councellor, or to two Justices of the Peace,*

Peace, whereof one to be of the Quorum, *to take, receive and record ſuch Recognizance and Bonds.*

There is a Proviſo *in this Act, that it ſhall not extend to* London.

And another Proviſo, *that the Party ſued may have all legal Defences, Appeals and Prohibitions.*

And it is to be obſerved that this Law extends to all ſorts of Tythes, mixt and perſonal, as well as predial. *Obſervations upon this Law.*

Next he that will have the benefit of this Law, muſt ſue for the ſingle Value, and not for the double Value upon the Statute of 2 *E.* 6.

Thirdly, The Plaintiff in the Eccleſiaſtical Court may proceed upon this Act for Contempt, Contumacy or Miſdemeanour, as well before as after Sentence.

Fourthly, The Security upon this Act may as well be by Bond as Recognizance.

Laſtly, Obſerve the wary penning of this Act; they muſt pay their Tythes and other Church Duties, according to the Eccleſiaſtical Laws and laudable Cuſtoms and Uſages of the place; next, if it be demanded before whom Suit upon this Statute ſhall be made, it is anſwered by the Statute it ſelf, it muſt be before ſuch Judge as hath Juriſdiction of the Cauſe, ſo that it creates or enlarges no Juriſdiction.

The next Act of Parliament concerning this matter is the Statute of 32 *H.* 8. *by which it is enacted, that all and ſingular perſons,* &c. *ſhall fully truly and effectually divide, ſet out, yield or pay all and ſingular* 32 H. 8. c. 7.

Tythes and Offerings, according to the lawful Custom and Usages of the Parishes and places where, &c. *and in case any person,* &c. *do detain or withhold any of the said Tythes or Offerings, or any part or parcel thereof, that then the person Lay, or,* &c. *shall or may convent the person, or,* &c. *before the Ordinary, according to the Ecclesiastical Laws,* &c. *and so proceed to Sentence according to the Process and Course of the Ecclesiastical Laws.*

And that if any Party appeal against the Judges Sentence, he shall then assess the Costs of his Suit therein before expended, and shall compel the Appellant to pay the said Costs by the compulsory Process and Censures of the said Laws, taking Security of the said Party, to whom the said Costs shall be paid, to repay the same, if the Appeal be adjudged against him.

And if any Person after Sentense definitive given against him, shall obstinately and wilfully refuse to pay their Tythes, or the Sum adjudged, that then two Justices of the Peace, whereof one shall be of the Quorum, *shall,* &c. *upon Information, Certificate, or Complaint to them made by writing by the said Ecclesiastical Judge,* &c. *cause the Party refusing to be attached and committed to the next Gaol, there to remain till he,* &c. *have found sufficient Sureties to be bound by Recognizance or otherwise before the same Justices to the use of the King to perform the said definitive Sentence.*

Provided that no person, or, &c. *to be sued or otherwise compelled, to yield, give or pay any manner of Tythes for any Manor, Lands,* &c. *which by the Laws or Statutes of this Realm are discharged, or not chargeable with,* &c. *Tythes.*

Provided

Provided that this Act shall not extend, or be expounded to give any Remedy, Cause of Action, or Suit in the Courts Temporal against any person, &c. which shall refuse or deny to set out his or their Tythes, or which shall detain, withhold or refuse to pay his Tythes, or Offerings, or any parcel thereof: but that in all such Cases the person or persons, being Ecclesiastical or Lay persons, having cause to demand or have the said Tythes or Offerings, or thereby wronged or grieved, shall take and have their remedy for their said Tythes and Offerings in every such Case in the Spiritual Courts, according to the Ordinance in the former part of the said Act mentioned, and not otherwise, any thing. &c.

Observations upon this Statute.

1. It appears by the Preamble of this Law, that this Act was particularly designed for the Relief of Impropriators, who before this Act were not capacitated to sue in the Spiritual Courts for the Subtraction of Tythes, and were hard put to it to find any other Relief.

2. Where by the former Act the Party for Contumacy, *&c.* might be compelled to give Security before Sentence, in this Case of the Lay Impropriators the Party cannot be compelled to give Security till after definitive Sentence.

3. Upon this Law there must be two Sureties at least; upon the former one sufficed.

4. The Security in this, as the former, may be by Bond or Recognizance.

5. Whosoever will have the benefit of this Act, must sue particularly upon this Law

Law for the single value, and not for the double value upon the Statute of 2 *E.* 6.

6. This Law extends, as the former did, to all manner of Tythes and Offerings.

7. *London* is excepted out of this Act, as it was in the former.

8. This Law only extends to customary Tythes, and not for Tythes due by Canon and Ecclesiastical Laws.

9. This Act only extends to such as shall obstinately and wilfully refuse to perform the Sentence of the Ecclesiastical Judge, and for no other Contempt or Neglect.

10. Lastly, This Act restrains the Suit to the Ecclesiastical Court upon this Statute; otherwise an Action, as should seem, might have been brought at Common Law upon this Statute for not setting forth, *&c.* of their Tythes.

But divers defects appearing in this Law, especially to the Lay-Impropriators, they obtained a more effectual Law for their purpose in 2 *E.* 6. by which it is enacted,

St. 2 E. 6. c. 13. *That if any person carry away his Corn or Hay, or other predial Tythes before the Tythe thereof be set forth, or willingly withdraw his Tythes of the same,* &c. *that then upon due proof thereof made before the Spiritual Judge, or any other Judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay double the value of the Tenth or Tythe so taken, lost, withdrawn or carried away, over and besides the Costs, Charges and Expence of the Suit in the same, the same to be recovered before the Ecclesiastical Judge according to the Ecclesiastical Laws.* There

There is a Proviſo *in this Act, that gives occaſion of many* Prohibitions *to this effect:*

That no perſon ſhall be ſued, or otherwiſe compelled to yield, give or pay any manner of Tythes for any Manors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledge or Preſcription are not chargeable with the payment of ſuch Tythes, or that be diſcharged by any Compoſition real.

Extends only to predial Tythes.

This Paragraph of this Statute as to the double value, extends only to predial Tythes as Corn, Hay, Wood, Flax, Hemp, Fruit, *&c.* but for mixt and perſonal Tythes, there is a Proviſion after in this Act.

Sole Juriſdiction to the Spiritual Courts.

There is alſo another Proviſo *in this Statute as in the former, which reſtrains all Suits for ſubtraction of Tythes to be ſued in the Eccleſiaſtical Court, and that it ſhall not be lawful to ſue any withholder of Tythes, Obventions,* &c. *in any other Court; and that if the Eccleſiaſtical Judge ſhall give Sentence, no Prohibition or Appeal depending, and the Party condemned do not obey the Sentence, that then ſuch Judges may excommunicate the party, and if he wilfully ſtand excommunicated by the ſpace of forty days next after Publication thereof in the Pariſh Church of the place or Pariſh, where the Party excommunicated is dwelling or moſt abiding, then the Judge Eccleſiaſtical may certifie the King in the* Chancery, *and require Proceſs of* Excom. capiend.

Excommunicato capiendo given.

This Clauſe extends to all manner of Tythes, Offerings, *&c.* but this gives no double damages for them, as the former Cauſe doth for Predial Tythes.

There

There is another Clause in this Act, that gives ground likewise for many Prohibitions, which is to this effect,

That the aforesaid Clause shall not extend to give any Judge Ecclesiastical Jurisdiction to hold Plea of any Matter, Cause or Thing repugnant to, or against the effect, intent or meaning of the Stat. *of* Westm. 2. c. 5. *the* Stat. *of* Articuli Cleri, Circumspecte Agatis, Sylvæ cæduæ, *the Treatise* de Regia Prohibitione Stat. 1 E. 3. c. 10. *or any of them, or to hold Plea in any matter, wherein the Kings Court ought to have Jurisdiction, any thing therein,* &c.

Note, That by these three Statutes before mentioned the Jurisdiction of Tythes is confirmed and restrained to the Ecclesiastical Courts.

Observations upon all the Statutes.

That by the Statute of 27 *H.* 8. Process for Contempt is given before Sentence.

By that of 32 *H.* 8. Process for Contempt is given after Sentence definitive: but observe the different penning.

And by this last Statute a Writ of *Excommunicato capiendo* is given, if the Party continue obstinate by the space of forty days, after an Excommunication published against him; so that a Man would think here were as good Remedies provided for the Recovery of Tythes in the Ecclesiastical Court as could be imagined; but the Interruptions that are frequently given by Prohibitions, as shall be shewed hereafter in due place, very much frustrate the effect of the Proceedings in those Courts.

And

And note, that a *Modus decimandi* is properly to be ſued for in the Eccleſiaſtical Courts; but if the Preſcription be denied, it ſhall be tried in a Prohibition. 2 Inſt. 490. Noy 81. Hetly 27. 133. Latch 210.

And ſo having ſaid ſo much concerning the Eccleſiaſtical Juriſdiction for the determining the right of Tythes, and relief againſt ſubtraction of Tythes, I ſhall in the next place ſhew in what Courts, in what Caſes and in what manner they are determinable in the Temporal Courts.

Mr. *Selden* in his Hiſtory of Tythes reckons up five manner of ways, whereby the right of Tythes may be determined in the Temporal Courts. 1. In Prohibitions, whereby the Spiritual Courts are forbidden to hold Plea where matters happen which are only tryable at the Kings Court, or where thoſe Courts proceed againſt any Statute or the Common Law, *&c.* 2. By Writ of Right of Advowſon; whereunto may be annexed the Writ of *Indicavit.* 3. By *Scire Facias.* 4. By Proceſs Mandatory to command the payment of Tythes. 5. By Suits and Actions upon the before-mentioned Statute of 27 *H.* 8. 32 *H.* 8. and of 2 *E.* 6. to which may be added the Tryals at Common Law by Actions of Treſpaſs, Aſſize, *&c.* And of theſe in order. Selden 422. *In what Caſes the Temporal Courts have, and may determine the Right of Tythes.*

And firſt of Prohibitions, which are frequently obtained out of the Courts at *Weſtminſter*, Courts of great Seſſions in *Wales*, and the County *Palatines*, &c. upon theſe grounds following. *In what caſes Prohibitions uſed to be granted.*

1. Upon

Hob. 286. 421. 247. 2 Inst. 6. 10. Co. Entr. 459. d. 460. b. Co. 2. 44. Dyer 74. p. 49. *Modus decimandi.*

1. Upon a *Modus Decimandi*, where the Defendant in the Spiritual Court suggests, that he and all those whose Estate he hath in the Lands, *&c.* in which, *&c.* have time out of mind paid so much Yearly in Mony, or given some other recompence in satisfaction of all the Tythes arising upon the Lands, or of all the Tythe Hay or Corn, *&c.* this manner of Tything being by Prescription, which is only and properly triable at Common Law, if pleaded in the Spiritual Court or not pleaded, or allowed or not allowed as a good Plea, there is a ground of a Prohibition; and what Prescriptions and *Modus Decimandi* are in this Case approved of by the Common Law, I must refer the Reader to the proper Chapter before.

Cap. 6. antea. *Bounds of the Parish.* Noy 147. Co. 7. 44. b. Roll 2. 291. l. 1, &c. 5 H. 5. 10. Cro. El. 228. *Monastery lands discharged of Tythes.*

2. If the Bounds of a Parish come in dispute, whether the place where the Tythes arise be in this or that Parish, this is a matter triable by Jury, and therefore upon a suggestion of this matter a Prohibition will be granted.

Co. Ent. 450. C. 453. d. Porter ver. Rochester. M. 6 Jac. C. B. Rol. 2. 307. v. 13. *Suits for things not Tythable.*

3. If Lands be pretended to be discharged of Tythes by the Statute of 31 *H.* 8. or any other Statute, a Prohibition lies, because it properly belongs to the Judges of the Common Law to expound all Statutes, *&c.* so if the suggestion be grounded upon the Statute of 2 *E.* 6. for barren grounds, *&c.*

4. If one sues in the Spiritual Courts for the Tythes of things not Tythable by the Common Law, for which see *cap.* 12. before, or for the Tythes of great Woods above

above twenty Years growth, it is a ground for a Prohibition.

No Tythes ſhall be paid of Hades and Balks in the common Fields, but ſhall be priviledged by the Corn. Littl. Rep. 13.

5. If a Suit be brought in the Spiritual Court for the taking and carrying away of Tythes, after the Tythes are ſet forth and divided from the ninth part by the Pariſhioner, unleſs the Suit be between two Eccleſiaſtical Perſons in their proper rights, a Prohibition lies, becauſe 'tis matter triable at Common Law. Roll 2. 286. f. 4. *For matters determinable at Common Law.* 38 E. 3. 5. Cro. El. 228. 642.

6. If the Spiritual Court will not admit a legal defence, as a Releaſe, an Accord with ſatisfaction, an Award, *&c.* or if the Spiritual Judge refuſe to admit the Defendant to traverſe the Plaintiffs Title, that he is not Parſon, Vicar, *&c.* a Prohibition will be granted; but if the Defendant in the Spiritual Court alledge ſuch matter againſt the Plaintiff there, which is properly triable in that Court, as Simony, *&c.* in ſuch caſe no Prohibition will be granted. Roll 2. 302. q. 19. 23, 24. v. 16. *For irregular proceedings of the Spiritual Courts.*

7. If the Spiritual Court ſhall diſallow the proof of the ſetting forth of the Tythes by one Witneſs, Prohibitions have been granted. *Contra Co.* 12. 65. *Ideo quære.* Cro. El. 666. Roll. 2. 300. q. 6, 8, 9. 301. q. q. 14, 15. More 909. Hetley 87. *Diſallow proof by one witneſs.*

There are many more caſes wherein Prohibitions have been granted, but theſe are the moſt frequent, and may ſerve for a taſte. And indeed Prohibitions are granted in all caſes, where they exceed their Juriſdiction.

By

2 E. 6. c. 13. *must produce a Copy of the Libel.*

By the Statute of 2 E. 6. *it is Enacted, That no Prohibition shall be granted in matters of Tythes in any of the Kings Courts, unless the Party that requires the same, bring and deliver to some of the Court where he prays such Prohibition, a true Copy of the Libel subscribed by the Hand of the Party, and the Suggestion under-written, and that if he do not prove that Suggestion by two honest substantial Witnesses, in the same Court within six Months after the Prohibition granted and awarded, then the Party delayed shall have a Consultation without delay, and double Costs to be assessed by the Court where the Consultation is so granted, to be recovered in an Action of Debt,* &c. *wherein no Essoin,* &c. *shall be allowed.*

Must prove the Suggestion within six Months.

Observations upon this Clause. Hoskins vers. Stroade. T. 5 Car. ro. 988. B. R. Cockeram vers. Davyes. Hill. 22 Jac. Poph. 159. Jones 231. Cro. Car. 308. 2 Inst. 662.

This Clause of this Statute seems to give the Parson, Vicar, *&c.* a double remedy where the Suggestion is not proved within six Months, that is, a Consultation, and secondly, double Costs; but in both these they are in some measure frustrated in their expectations: for as to the first, after such Consultation a new Prohibition may be obtained; and besides, there are several cases wherein the Party cannot or needs not prove his Suggestion, notwithstanding this Statute, as where the Suggestion is in the negative, which regularly cannot be proved: Secondly, if the Suggestion be grounded upon any matter of Law, as in case the Suit be for things not Tythable, great Wood, things *feræ naturæ*, *&c.* this appearing in the Libel, a Prohibition lies, and there needs no proof of the Suggestion.

2 Inst. 662.

If

If a ſuggeſtion contain two matters, and the one ought to be proved within ſix Months, and the other here, though the Party fail in proving that part that ought within this Law to have been proved, yet no Conſultation ſhall in this caſe be granted. Cobbe verſ. Hunt. 5 Jac. B. R.

A ſleight proof will ſerve in this caſe, as to ſay they have known it ſo, or that common fame is ſo. Noy 28.

And if the ſuggeſtion be proved before a Judge within the ſix Months, though not recorded till after, it ſuffices. Noy 30, 44.

If a Man make an inſufficient proof of his ſuggeſtion in a Prohibition, it may be ſupplied at any time during the ſix Months within the Statue. Littl. Rep. 185.

To the ſecond here is double Coſts to be awarded for want of proving the ſuggeſtion, and no Execution given, but an Action of Debt to recover it; which is but a bad remedy in this caſe, when the Party ſhall only recover the coſts, and have no coſts allowed him in the ſecond Suit.

If a Man have a Prohibition, and do not prove the ſuggeſtion within the ſix Months, and the Defendant takes iſſue upon it, which is found againſt him, in this caſe the Defendant ſhall have no coſts. Noy 81.

So upon the whole matter here is a plauſible clauſe in an Act of Parliament, and little benefit by it.

In what caſe Prohibitions are Peremptory in themſelves.

It is to be obſerved that ſome Prohibitions are in themſelves peremptory, as where there is a Suit in the Spiritual Court for things not Tythable, and appearing ſo in

the Libel, in which cases a Consultation shall never be granted: And so it is, if the Suit be for carrying away Tythes after they are set forth, unless it be between Clergy-Men in their own rights: and so it is where the matter is determinable at Common Law, and the same appearing in the Libel.

where ex post facto.

But where a *Modus decimandi*, a custom of not Tything, a priviledge within the Statute of 31 *H.* 8. for Abby Lands, and in such other cases, where the Suggestion is grounded upon matter of fact, which is doubtful to the Court, those Prohibitions are not peremptory till the matter of fact be tryed and found true by Verdict.

More 919.

And Note, that the Reversioner may have a Prohibition upon a Suit against his Tenant.

But it is a question whether two that are sued severally in the Spiritual Court may be upon the same *Modus* joyned in a Prohibition.

Hetly 147.

The manner of proceeding in the obtaining, prosecuting and defending of Prohibitions, is in this manner.

How to prosecute and defend Prohibitions.

The Party that is sued in the Spiritual Court, and desires a Prohibition, moves the Court, and for the most part makes his Suggestion *ore tenus* at Bar: if the Suggestion be such upon which a Prohibition cannot be denied, the Court usually gives rule, that the Party shall at a certain day come to shew cause why a Prohibition should not be granted, and that in the interim proceedings in the Spiritual Court should be stayed:

ed: upon ſerving this Rule in due time, and Oath made of it, if the Plaintiff in the Spiritual Court do not appear at the day, and ſhew good cauſe to the contrary, the Prohibition is awarded, and the rule made peremptory; but if the Court be doubtful, whether the matter be ſufficient to ground a Prohibition or no, then, or at the Prayer of the Defendant, the Court will order the Plaintiff to draw up his Suggeſtion into form, and then the Court will conſider of the matter, or the Defendant may demur to it, and the matter argued by Learned Counſel, and then the Court as they ſee cauſe, will either award the Prohibition, or diſcharge the Rule. But if the matter ſuggeſted be a good ground for a Prohibition, but is in it ſelf falſe or doubtful, the Defendant in the Prohibition may demand a Declaration of the Plaintiffs Attorny, which is grounded upon a ſuppoſed Attatchment, for not obeying the Prohibition; to which the Defendant may plead as Counſel ſhall adviſe him, and Traverſe, and put in iſſue the matter of the ſaid Suggeſtion, or ſuch other matter as Counſel ſhall adviſe, which is to be tryed by a Jury of the Country; if it paſs with the Plaintiff, then is the Prohibition become peremptory; but if the Verdict paſs for the Defendant regularly, a Conſultation is awarded, that is, a Writ directed to the Judge of the Spiritual Court, authorizing him to proceed, notwithſtanding the Prohibition.

Littl.Rep 367. If a Man be sued in the Spiritual Court for the Tythes of Wood, Herbage, *&c.* and a Prohibition granted because the Wood was burnt in the House, or the Cattel bred for the Plow or Payl, the Defendant may plead, that the Wood or Cattel were sold, and Traverse the Suggestion.

Hetly 147. It has been made a Question, whether two that are sued severally in the Spiritual Court, may joyn in a Prohibition upon the same *Modus*.

St. 50 E.3. c.4. *Where a Prohibition may be had after consultation.* Now by a Statute made in the 50 *E.* 3. it is Enacted, That where a Consultation is once duly granted upon a Prohibition made to the Judge of Holy Church, that the same Judge may proceed in the Cause by virtue of the same Consultation, notwithstanding any other Prohibition thereupon to be delivered; provided always that the matter in the Libel of the said Cause be not ingrossed, inlarged, or otherwise changed.

Jones 231. Cro. Car. 208. Poph. 159, &c. But this Statute has been several times held to extend to such Causes only where Consultations are judicially granted upon examination of the Cause, and not where they pass of course, as for want of proof of a

More 917. Suggestion, or upon nonsuit for want of prosecution, or where the first was granted for want of a Copy of the Libel, or such like.

Co. 5. 68. a. Co. 12. Rep. 44. *Consultations sub modo.* Sometimes the Court grants a Consultation *sub modo*, as where the matter of the Libel is in the disjunctive, and as to one part the Court has Jurisdiction, and to the other not, there the Court may grant a Consultation as to that part that the Spiri-

tual

tual Court has Jurisdiction of, and let the Prohibition stand as to the other.

Or a Consultation may be granted, so that the Spiritual Court allow such plea, of such proof. Sommers verſ. Sir R. Bulkley, T. 32. El. B. R. Poph. 58.

Note that the six Months for the proof of the Suggestion is according to the Kalendar, and not 28 days to the Month. Hob. 179. *How the six Months to prove a Suggestion is to be accounted.*

And note in the Cases before put, the Prohibition shall be general, and the Consultation special, *quoad, &c.* Co. 5. 68. a.

And it is taken for a Rule in Sir *Henry Hobarts* Reports, that if a Prohibition be faulty, yet the Defendant shall never have a Consultation, if it appear to the Court that the Suit in the Ecclesiastical Court was not well grounded. *where no Consultation shall be granted upon a Verdict for the Defendant.* Hob. 300. Dyer 171. p. 5, 6.

And therefore where one sued for the Tythe Corn of sixty Acres of Land, and the Defendant suggested it was barren ground, and paid no Tythe, and pray'd and had a Prohibition, and the Jury found that thirty Acres of it were so, and that the other thirty were barren, but had paid Tythe Wool and Lamb, and a Consultation denied, because it appeared the Plaintiff had no cause to sue for Tythe Corn.

So if one lay a *Modus* for the whole Town, and prove it for himself only, no Consultatiou shall be granted. Noy 28.

So in a Prohibition it was suggested, that the Parson had 20 Acres of Land, and 10 Acres of Wood in discharge of all Tythes, and the proof was, that he had 20 Acres of Land only, and a Consultation denied, because it apeared he had no cause of suit. More 911. Austen verſ. Pigot. Cro. El. 736.

Prohibition after Sentence. Hob. 97. Noy 70. Winch. 8. Cro.El. 595. Hob. 67.

Regularly a Prohibition ought not to be granted after Sentence, unless it appear the Sentence were obtained in the Vacation, or by surprize, so that the party had not time to pray it sooner, or upon matter arising after the Sentence, and the granting or not granting rests much in the discretion of the Court.

After Consultation.

And so sometimes upon new matter arising, after a Consultation a Prohibition may be granted, notwithstanding the aforesaid Statute of 50 *E.* 3. as where the Spiritual Court after Consultation proceeds to try matter determinable only at Law, or if after a Consultation the Spiritual Court will make an unjust Decree as to award treble damages: and so in all cases if the Spiritual Judge will proceed illegally, and against the Common Law, after Consultation a new Prohibition may thereupon be obtained, but not upon any matter alledged in the Libel.

Hob. 286.

Hughs 245. Hill. 11 Jac. C. B. Baldum vers. Geery.

The vertue and vices of Prohibitions.

Prohibitions of themselves are excellent things, where they are used upon just, legal and true grounds; and have often avoided the Usurpations of the Popes and Spiritual Courts: but by the Corruption of these later times they are grown very grievous to the Clergy, being too oft granted upon feigned and untrue Suggestions, which it is impossible the Judges should foresee without the spirit of Prophesie. And I think I may presume to say, That where one was granted before Queen *Elizabeths* time, there have been a hundred granted in this last Age, and they are a very

very great delay and charge to the Clergy, and it were well, in my poor judgment, if the Reverend Judges would think of some way to restrain them, or to make them pay well for their delay, by making the Plaintiff enter into Recognizance to pay such Costs, as the Court out of which they issue, should Award, in case they should not prove their Suggestion in convenient time, or some such other course as they in their great wisdom shall think just and meet.

And so having done with the first manner of determining the right of Tythes at the Common Law, I shall proceed to the second, which is by Writ of Right of Advowson, to which likewise belongs the Writ of *Indicavit*, which in it self is no other but a meer Prohibition to the Ecclesiastical Judge; and first of the *Indicavit*.

Indicavit *at Common Law.*

There have been some Opinions, That the Writ of *Indicavit* is grounded upon the Statute of *Circumspecte Agatis* and *Articuli Cleri*, *cap.* 2. But it is very clear this Writ lay at common Law; and it appears in our Books, That it was the Opinion of some learned Judges that it lay in all cases where the right of Patronage might come in dispute, and of this Opinion Sir *Edward Coke* seems to be.

38 H. 6. 20. a. per Molle. 4 E. 3. 27. b. per Markham. 2 Inst. 364. *Lay for any Tythes.*

And *Bracton* a Learned Judge who wrote in the time of *H.* 3. hath the very Writ in his Book, which was long before the Statutes above-mentioned; and he saith that this Writ lies, *Si contentio fuerit inter Rectores de aliquibus decimis; quæ æstimari possunt*

Bracton l. 5. c. 4. 402. b. For a sixth part.

usque ad quartam, quintam vel sextam partem advocationis. Et ultra quam partem non extenditur prohibitio, prout sibi videtur.

But whatsoever the Common Law was, it is now setled by the Statute of *Circumspecte Agatis*, and *Articuli Cleri, cap.* 2. That unless at least the Tythes in demand be of the fourth part of the value of the Church, this Writ lieth not: The Statute of *Articuli Cleri c.* 2. is, *si sit contentio de jure decimarum originem habens de jure Patronatus, & earundem decimarum quantitas ascendat ad quartam partem bonorum Ecclesiæ, locum habeat Regia prohibitio*, that is to say a Writ of *Indicavit*.

Articuli Cleri c. 2.

2 Inst. 491. *where the* Indicavit *lies.*

And this Writ lies as hath been said where one Parson demands Tythes against another Parson to the fourth part of the value of the Church or more, which comes into their Churches by several Patrons, for if the Incumbents come in both by one Patron the Right of the Advowson cannot come in question, and by consequence this Writ lies not.

Suppose there be a Parson with a Vicarage endowed, whereof the Parson is Patron; and a Suit be for Tythes belonging to the Parson, to the value of a fourth part of the Parsonage, but not to a fourth part of the Parsonage and Vicarage: It should seem in this case though the Vicarage were derived out of the Parsonage, and may again be re-united to that, nevertheless by reason of the several Patrons an *Indicavit* will lie in this Case.

And

And it is to be obſerved, that this Writ doth not lie before Libel, nor after definitive Sentence, for the party that prays this Writ muſt ſhew a Copy of the Libel in the Court of Chancery before he can have it. F.N.B. 45.b.c. 12 E. 4. 13. *When.*

And though the Law be reſtrained at this day to a fourth part of the value of the Church, where before it was at large. Yet the form of the Writ remains, and if the thing in demand be under the fourth part of the value, it muſt be ſhewed in Pleading by the other ſide. 2 Inſt. 364. *The form of this Writ not altered by the Statutes.*

And this Writ lies as well for Offerings, as for Tythes; when ſuch Writ is ſued and ſerved, and the proceeding in the Spiritual Court ſtopt, then the Plaintiff there is to ſue his Writ of Right of Advowſon of ſuch a portion of Tythes as the Caſe requires, and this is given by the Statute of *Weſtm.* 2. *cap.* 5. in theſe Words, *Et cum per breve de Indicavit impeditur Rector alicujus Eccleſiæ ad petendas decimas in vicina parochia, habeat Patronus Rectori ſic impedito breve ad petendam advocationem decimarum petitarum:* but this muſt be intended where the Patron has the Fee-ſimple of the Advowſon. And the *Indicavit* is to be brought in the name of the Patron and his Clerk againſt the other Incumbent, that ſues in the Eccleſiaſtical Court and his Patron; but the Writ of Right of Advowſon is to be ſued by the one Patron againſt the other, and the Patron demandant ſhall alledge Explees taken by his Incumbent of great and ſmall Tythes. F.N.B. 45. b. *Lyes of Offerings.* Weſtm. 2. c. 5. *By whom.* F.N.B. 45. b. *But where the ſame Parſon is Patron and Incumbent.* 12 E. 4. 13. b.

But

F.N.B. 30. b. *The relief of Tenant in Tail, Purveyances, &c.* 2 Inst. 364.

But if the Patron against whom the *Indicavit* is sued, be but Tenant in Tail, Tenant for Life or Years, then he cannot maintain a Writ of Right, but must demand and appear to a Declaration upon an Attachment, and plead his Title, which must be proceeded in, as in other Prohibitions; and when the Title of the Patronage is determined at the Common Law, then the Cause must be remitted to the Ecclesiastical Court, where Sentence must be given according as the Law has determined the Right, and this appears by the Form of the *Indicavit*, which is special, *Vobis præcipimus ne placitum illud teneatis, donec discussum fuerit in Curia nostra ad quem illorum pertineat ejusdem Ecclesiæ advocatio.*

The Proceeding remitted.

Regist. 36. a. 33. b.

And there is a note in the Register, that this Writ lies of a Vicarage, Prebend, *& aliis similibus* as well as of a Rectory: and the Form of the Writ is thus: *Præcipe* A. *quod reddat* B. *advocationem decimarum quartæ partis vel medietatis Ecclesiæ*, &c.

F.N.B. 30. c.

But these Writs as well as other real Actions, are grown obsolete and seldom put in practice, and therefore thus much shall suffice of the nature and proceeding in them.

Scire facias. 18 E. 3. c. 7.

The third manner of proceeding for the determining the Right of Tythes at Common Law was by *Scire facias*, which was grounded either upon Letters Patens, Fines or other judicial Records, of which Mr. *Selden* instances several Precedents; but this manner of Trial being taken away by the Statue of 18 *E.* 3. *c.* 7. I shall say no more of it.

Seld. Hist. decim. 439, *&c.* Co. Inst. 2. 640. 2 Inst. 640, *&c.*

The

The fourth sort of determining the Right of Tythes at Common Law, mentioned by Mr. *Selden*, is Writs Mandatory, commanding the payment thereof, whereof he gives some few instances, but these having never been frequent, and for long time discontinued and grown out of use, I will not trouble the Reader with them, but refer the curious Reader to Mr. *Selden*'s History of Tythes, and proceed to the fifth manner of determining the Right of Tythes at the Common Law, which is grounded upon the late Statutes. *Writs Mandatory.* Seld. 444, &c.

For the Statute of 27 *H.* 8. there hath been sufficient said already; for that of 32 *H.* 8. that concerns the Temporal Jurisdiction, I shall leave it till the last, and proceed to shew what Authority is given to the Temporal Courts by the Statute of 2 *E.* 6. *cap.* 13. being the first Law that ever gave the Temporal Courts Jurisdiction for the Parson against the Parishioners for subtraction of Tythes, in which there is a Clause to this effect. 2 E. 6. c. 13.

And it is enacted by that Statute after it has confirmed the former Statutes of 27 *H.* 8. *c.* 20. and 32 *H.* 8. *c.* 7. *That every of the Kings Subjects should from thenceforth truly and justly without fraud or guile set out, yield and pay all manner of their predial Tythes in their proper kinds, as they arise and happen in such manner and form as hath been of Right yielded and paid within forty years next before*, &c. *or of Right or Custom ought to have been paid, and that no person thenceforth should take or carry away such or like* Treble value.

like Tythes, which had been yielded or paid within the said forty years, or of right ought to have been paid in the place or places tithable of the same, before he hath justly divided or set forth for the Tythes thereof, the tenth part of the same, or otherwise agreed for the same Tythes with the Parson, &c. *under the pain of the forfeiture of the treble value of the Tythes so taken and carried away.*

This Clause being compared with the former Clause, almost penned in the same words for the double value, would make a Man at a stand what the meaning of the Parliament was, and it was forty years (when almost all that were at the making of this Act were dead) before it was found out, that an Action of Debt lay upon this Clause at Common Law for the treble damages: To wit, *Pasch.* 29 *Eliz.* In the Exchequer in an Information by the Queens Attorny against one *Wood* for the treble value, as forfeited to the Queen. In which Case it was resolved, that an Action of Debt lay at the Common Law for the treble damage, for not setting forth of Tythes; for wheresoever an Act of Parliament gives a Forfeiture against him, that doth dispossess, *&c.* the Owner of his Property, as here he doth of his Tythes, there the Forfeiture is given to the Party grieved or dispossessed. Since which resolution Actions of Debt have been frequently brought in all the Courts of *Westminster*, by Parsons, Vicars, Proprietors, Owners and Farmers of Tythes, as well Lay as Spiritual upon this Statute, but being so long before it

2 Inst. 650.

was

was found out, that an Action lay at Common Law upon this Statute, the Plaintiffs in the recital of the Statute alledged it to be made the fourth of *February*, 2 *E.* 6. whereas in truth the Parliament begun the 1st of *E.* 6. and was held by Prorogation the fourth of *February*, 2 *E.* 6. And this being discovered by an Action between *Oliver* and *Colier*, *P.* 6 *Jac. B. R.* brought upon this Statute, wherein the Statute was misrecited as aforesaid, and exception taken to it in arrest of Judgment, the Court upon good advisement over-ruled the exception by reason of the multitude of Presidents, and affirmed the Rule, that *multitudo errantium parit errori Patrocinium.*

1 Brownl. 100. Yelvert. 126. Dyer 171. p. 6. Stile 122.

Now considering that this is become a very frequent Action in use, I conceive it will not be improper to the present occasion to communicate to the Reader what I have observed and learned in this kind of Actions, not only concerning the Forms of Declarations, Pleadings, Verdicts and Judgments, but likewise what Evidence is necessary upon the general Issues of *non culpa.* and *nil debet*, for the Plaintiff and Defendant: And in the first Case consider in what Cases, and by whom, and against whom this Action may be brought.

* If two be Joynt-Tenants, and they enter and occupy joyntly; the Action must be brought against them joyntly, but if one only enter and occupy, the Action must be brought against him, that only occupies alone.

* Hutt 121. 122. *By whom and against whom Actions lie in this Statute.*

Nota,

Syderf. 88. 181. *Nota*, That the Action lies by Executors, but not against Executors.

But if there be two Tenants in Common, and one of them sets out his Tythe, and the other carries it all away, there the Action shall be brought against him, that carries it all away alone.

Noy 3. If the Parson have two parts of the Tythe and the Vicar a third part, and one Man farms all, he may sue for all in one Action.

Noy 136. 1 Brown. 86. Yelvert. 63. Cro. Jac. 88. More 912. If the Husband and Wife in the Right of the Wife be intituled to Tythes, they shall joyn in this Action, because the damage is to survive: But a Parson and a Vicar cannot joyn, but if they joyn in a Lease to a third person, their Farmer may sue for all in one Action; but in the first Case, I see no reason but that the Husband may bring the Action alone, and so I have known it often done.

The Form of the Declaration. Pellet *vers.* Henworth P. 1657. B. R. In an Action brought upon this Statute, the Severance was alledged before the sowing, and Exception taken after Verdict; but the Exception was disallowed, because the shewing of the sowing was superfluous, and so aided by the Verdict.

Cro. Car. 324. The taking was alledged after the Plaintiffs Term was ended, and yet held good.

More 911. *M.* 40 and 41 *Eliz.* A Judgment was arrested, because the Suit was brought *ad respondendum tam Domino Regi quam parti*; but this Case I very much doubt, for being against a Statute Law it is a Contempt fineable, though the Plaintiff have the Forfeiture,

ture, as upon the Statue of Heu and Cry, &c. and I take the Caſe *inter Luvered* and *Owen*, *M.* 4 *Jac. C. B.* for the better Law, where it was held good. Hetley 121.

In an Action of Debt upon the Statute of 2 *E.* 6. a Parſon ſued for Tythe in a foreign Pariſh without ſhewing how he was intituled to them, which was moved in Arreſt of Judgment after Verdict, notwithſtanding it was held good. Another Exception was that he had not alledged that the Defendant was *Subdit. Domini Regis*, but likewiſe over-ruled becauſe he was alledged to be an Occupier of Lands. Hardres 173. Vid. Cr. Jac. 324.

Upon an Action brought by two upon this Statute, who made their Title by a Leaſe from a Patentee of the King, and Exception was taken, becauſe they did not ſhew the Patent, but diſſallowed. 1. Becauſe the Letters Patents did not belong to the Plaintiffs. 2. Becauſe the Plaintiffs did not demand the Tythes themſelves, but damages for a Tort; another Exception was taken to the Declaration, becauſe the Plaintiff alledged the Defendant did not agree with them, and did not ſay, or either of them, but held good by Intendment. Cro. El. 170.

And it hath been adjudged, that in this Action, the Plaintiff needs not to ſhew his Title eſpecially, but it is enough for him to alledge that he is Proprietor, Farmer or Rector, generally without ſhewing how. 2 Bulſt. 65, 228, 183. 1 Brown. 86. Noy 3. Yelvert. 63. Cro. Jac. 68.

And it hath been held good, though the Plaintiff in his Declaration do not expreſs the quantities or Loads of the Corn or Hay carried away. 361. 2 Brown. 70, 71.

And

2 Inst. 650.

And so it is, though you do not express in your Declaration, the kinds of the Grain carried away.

Coke *vers.* Smith, H. 7 Car. 1. ro. 587. B.R. per Latch.

Where a Man alledged, that he was Farmer of all the Tythe-Corn arising, *&c.* upon sixty Acres of Land in *D.* and did not alledge which they were in certain, and yet allowed for good. 2. The Plaintiff alledged the Defendants Occupiers, but did not say, whether joyntly or in common, and yet held good. 3. The Plaintiff had alledged no time of the carrying away, but having alledged no time of the severance, and the carrying away, coming in with a Conjuction Copulative it was held well enough.

Cro. Jac. 324. 2 Bulstr. 114.

In an Action brought upon this Statute, the Plaintiff averred in his Declaration, that he was *Subditus dicti Domini Regis*, having recited the Statute, and it was held naught, because it must necessarily be intended *E.* 6. and not of the present King.

Pleas in this Action. Porter *vers.* Rochester. Hill. 9 Jac. B.R.

In an Action upon this Statute the Defendant pleaded a Recovery in the Ecclesiastical Court; but it was held no good Plea at Common Law; but I conceive it would be a good evidence upon *nil debet* pleaded, otherwise the Parishioner were in an ill Condition.

Wortley *vers.* Empringham. *P.* 42 El. B. R. Hob. 218. Cro. El. 766. Cro. Jac. 361. More 914.

In this Action *non culp.* and *nil debet* have been both held good Issues, but it is no good Plea to plead, that the Plaintiff sowed the Corn, and sold it to the Defendant, because this matter will not excuse the payment of Tythes.

Now

Now having brought the Cauſe to iſſue upon *nil debet* or *non culp.* we will ſhew in the next place what will be good and material Evidence, as well for the Plaintiff as Defendant.

What Evidence is neceſſary in this Action, ex parte quer.

Firſt, If the Plaintiff be a Parſon, Vicar, or other Eccleſiaſtick, and have not been ſome conſiderable time in poſſeſſion of his Living, in which I have not obſerved any conſtant Rule amongſt the Judges in their practice, but ten years quiet poſſeſſion for the moſt part is allowed by the Judges for an Evidence of the Plaintiffs Title, unleſs ſome material Objection be made againſt it to draw it into queſtion; but if the Plaintiff have been but for ſome ſhort time in poſſeſſion, or the poſſeſſion litigious, then the Judges uſually put the Plaintiff to prove his Inſtitution and Induction, and now he muſt prove that he was in Epiſcopal Orders at the time of his Inſtitution, otherwiſe his Inſtitution is void. By the late Act of Uniformity he muſt produce a Certificate under the Hand and Seal of the Biſhop, *&c.* that inſtituted him, that he ſubſcribed the Declaration mentioned in the Act of Uniformity, and muſt prove he ſubſcribed the ſame in the preſence of the Biſhop, or, *&c.* and he muſt prove that within two Months after he was Inducted, upon ſome Sunday or Lords-Day during Divine Service, he read the thirty nine Articles of Religion in the Pariſh Church into which

he was Inducted, and that he did declare his unfeigned assent and consent to all things therein contained, and he must likewise prove that within two Months after actual possession of his Living, he read Morning and Evening Prayer in his Church upon some Lords day, and openly and publickly before the Congregation declared his assent and consent to the use of all things therein, contained and prescribed in these words, *I* A. B. *do here declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the Book Intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church according to the use of the Church of* England, *together with the Psalter or Psalms of* David, *pointed as they are to be sung or said in Churches, and the form and manner of making, or Ordaining and Consecrating Bishops, Priests and Deacons.*

The Parson, Vicar, *&c.* having thus made himself a Title, must proceed to prove the taking and carrying away the Corn, Hay, *&c.* and the value; and if need be, that the Land lies within the Parish, *&c.* but this the Judges put them to prove first of all commonly.

But if the Plaintiff be a Farmer or Patentee under the Crown he must prove his Title, but if he have been any considerable time in possession and the Title not controverted, the Judges seldom put the Plaintiff to shew any more Title but his

his bare poſſeſſion and enjoyment, and that others pay him Tythes.

And ſo having ſhewed what is neceſſary the Plaintiff ſhould be prepared to prove, I will proceed to ſhew what defence the Defendant may make.

The Defendant upon the general iſſue of Not guilty, *&c.* may prove that he duly ſet forth his Tythes; but if he afterwards carried them away, it will not ſerve his turn; ſo if he ſell his Corn privately to another, and after he has ſold it privately, cuts and carries it away, the Action lies againſt the firſt Owner; the ſame Law is, where the Owner of the Land privately ſell his Corn to another who privately cuts and carries it away. Ex parte defendentis. Brown. 1. 34. 2 Inſt. 649.

If there be two Farmers ſue, and the Defendant pleads *nil debet*, and upon the tryal prove an agreement with one of them, this ſhall bind his Companion. More 915.

And the Defendant may prove that another has a better Title to whom he has paid his Tythes, or compounded with him for them.

Or that he may prove that the Parſon came in by Simony or any other matter that makes his Preſentation, Inſtitution or Induction void, or any other defect in not reading the Articles, *&c.*

Or he may prove that he ſet forth his Tythes, and a Stranger carried them away, or may give in evidence, a Leaſe or Grant from the Plaintiff himſelf, or to any other to whom he can make a good Ti-

tle, but such Leases and Grants must be in Writing, unless for one Year only, to the Owner of the Land, which hath been held good by way of retainer.

Verdict. The Jury, if they find for the Plaintiff, are to find how much of the Debt demanded by the Declaration is due to the Plaintiff, which they are to do by trebling the value of the Tythe subtracted, wherein they are usually assisted by the Court.

Judgment. The Judgment is always given for the Debt found by the Jury without Costs, because this Action is grounded upon a penal Law, where no Action lay at Common-Law, neither shall the Defendant have any Costs if the Verdict pass for him: but if the Jury should upon the Tryal give Cost and Damage, the Plaintiff may release them and take his Judgment: But if Judgment be given for the Plaintiff in an Action brought upon this Statute by *Nihil dicit*, *non sum informatus*, or Demurrer, the Plaintiff shall have Judgment for the whole Debt demanded by his Declaration. And if an Action upon this Statute be brought against two or more, and Verdict only pass against one, or part of the Defendants, the Plaintiff shall have Judgment against those against whom the Verdict passes, though the others be acquitted.

More 915.

Cro. Jac. 361, 562.

Stiles 317, 318.

Note that this Statute, as to the treble value and double value, extends only to Predial Tythes and not to Personal, mixt, or other Church Duties.

Nota.

The

The Chancery likewiſe by Engliſh Bill holds Plea of Tythes, as may be made out by many Precedents. Savil 69.

Juriſdiction of the Exchequer.

The Exchequer likewiſe by Engliſh Bill holds Plea for a ſingle value, for ſubtraction of all manner of Tythes, Oblations, *&c.* of which great uſe hath been made ſince the late Wars; and there they decree the ſingle value with coſts, and the future payment, which is of great advantage to the Plaintiffs, and theſe Suits are not interrupted with Prohibitions; but theſe Suits are often very coſtly too, for if a *Modus decimandi*, or the bounds of the Pariſh come in queſtion, and the proof not very clear, they are frequently ſent to Tryals at Law, which gives delay and increaſes the charges very much. This Juriſdiction I take it is much fortified ſince Tenths and Firſt-fruits were annexed to the Crown: but Suits of this nature were rarely brought in this Court before the War, however, there are ſome ancient Books prove that this Court on the Law ſide has aſſumed Juriſdiction of Tythes, but the Reporter reports it with a *quod mirum*. 38 Aſſ. p. 20. 44 E. 3 43, 44.

Where the Kings Copy-holder pleaded a *Modus*, it muſt be tryed in the Exchequer, and for this cauſe a Prohibition was granted. Lane 39.

Laſtly, It is evident in our Books of Law, that the right of Tythes were frequently determined at Common Law in Actions of Treſpaſs for taking away of Tythes, unleſs both Parties were Clergy-Men; and ſome- 50 E. 3. 20. 2 H. 4. 15. 20 H. 6. 17. 1 H. 6. 5. 2 E. 4. 5. 44 Aſſ. p. 25.

38 E. 3. 5. 22 E. 4. 24. 2. times Assises have been brought at Common Law for Tythes between Lay-persons. And it is held in the 25 *H.* 8. that

25 H. 8. Br. *Jurisdiction* 95. where the Lord of a Mannor claimed Tythes in consideration of finding a Chaplain at such a Chappel, and the Parishioners claimed them likewise upon the same consideration, that the right of these Tythes being between Lay-persons was tryable at Common Law only.

38 E. 3. 5. And at this day if Tythes be once set forth and divided from the Nine parts by the Owner of the Corn, and any person that has not right to them carries them away, the Suit for this Trespass must be in the Temporal and not in the Spiritual.

Stat. 32 H. 8. cap. 7. And by the Statute of 32 *H.* 8. It is Enacted, That in all cases where any person, *&c.* which then had, or then after should have any Estate of Inheritance, Free-hold, *&c.* in or to any Parsonage, Vicarage, Portion, Pension, Tythes, Oblations, and which then were, or then after should be made Temporal, or admitted to be, abide and go to, or in Temporal Hands and Lay Uses, and profits by the Law, *&c.* should then after fortune to be disseised, deforced, wronged, or otherwise kept or put out from their lawful Inheritance, Estate, Seisin, Possession, Occupation, Term, right or Intereſt, of, in, or to the same, or, *&c.* by any other person, or, *&c.* claiming or pretending to have Intereſt or Title to the same, that then, and in every such case, *&c.* the Person, *&c.* so dis-

diſſeiſed, &c. the Heirs, Wives, &c. ſhall and may have their Remedy in the Kings Temporal Courts, or other Temporal Courts, as the Caſe ſhall require for the recovering, &c. ſuch Inheritance, &c. by Writs Original of *Quod ei deforceat*, *præcipe quod reddat*, *Aſſize*, &c. as the Caſe ſhall require, &c. So that ſince this Statute the Caſe is put out of all doubt, that for ſuch Tythes, &c. which are become Lay-fee, the Right, Title and Poſſeſſion is become determinable at the Common Law, and all manner of real Actions, Ejectments and other perſonal Actions are brought there as the Caſe requires daily.

There was a Bill exhibited by a Vicar in the Exchequer, and the Vicar who was Plaintiff did not ſhew how the Tythes he ſued for became due, whether by Preſcription or Indowment, and Exception taken to it at the hearing; but becauſe the Defendant had admitted the Plaintiff Vicar, and that the Tythes were due and inſiſted upon the payment, the Exception was over-ruled, but the Book allows it to have been a good Cauſe of Demurrer. Hardres 130.

And yet *H.* 15 *Car.* 2. *inter Stone* and *Ludlow* ſuch a Bill upon Demurrer was held good, *Ideo quære.* Hardres 321, 322.

An Engliſh Bill was exhibited in the Exchequer for the Tythe of Houſes in *London* to have a diſcovery of the improved Rents, and the Defendant alledged a *Modus*, and Exception taken to Hardres 132, 133.

the Answer because the Defendant did not discover the Rents, but the Court held that the *Modus* being alledged by way of Answer, the Defendant ought to answer all the Bill, and discover the Rents; but if he had alledged it by way of Plea he had not been bound to answer any other part of the Bill, and if the Plea were over-ruled, then the Defendant should answer Interrogatories to the particulars.

Hardres 190. In a Bill in the Exchequer for Tythes the Plaintiff did not alledge that he was content with the single value according to the Common form, and for that Cause was demurred to and over-ruled, because this Court had Jurisdiction before the Statute of 2 *E.* 1. was made.

Hardres 322. In a Bill in the Exchequer for Tythes, the Defendant pleaded that the Lands out of which the Tythes arose belonged to such a Monastry, which was discharged from payment of Tythes by their Order, but did not shew of what Order the Monastry was, and yet held good.

And now having shewed in how many Courts, and how many ways Tythes may be recovered, it calls to my mind the Fable of the Fox and the Cat, who had but one way to shift for her self when the Hunts-men came, but that one proved better and more secure than all the shifts the Fox had boasted of; for upon the whole matter it were much better for the Reverend Clergy if they had one ready way to recover single damages with their Costs

of

of Suits at Common Law, where they might not be interrupted by Prohibitions, and clashing of Jurisdictions, and tost from one Court to another, than all these ways I have mentioned. And it is a wonder to me that there being hardly a Lord in Parliament, nor many of the House of Commons that have not some part of their Estates in Impropriations, though they had no kindness to the Church, yet for their own interest and concerns have not to that purpose preferred some Law in Parliament before this time; which might be done in a few Lines, by giving an Action of the Case at Common Law for the subtraction of Tythes with Costs, or if the Parliament should think fit the smaller sort of Tythes might be determined in a Summary way by the Justices of Peace with an Appeal to the Judges of Assize; but this I humbly submit, as I do all the rest, to better Judgments.

The Conclusion of the whole.

I have now finished this small Tract, whereby I wish the Reverend Clergy may receive as much satisfaction as I desire, or they can expect. And I shall now conclude all with a List of those Monasteries, the Lands of which are only capable to be discharged of the payment of Tythes, by Order, Bull, Prescription, real Composition or otherwise, that every Clery-Man may satisfie himself without farther enquiry whether such Monastry Lands as shall happen to be in his Parish, *&c.* may have

have the benefit of the Statute of 31 *H.* 8. to be freed from the payment of Tythes: and in the List following I have set down the times of the Foundations of the several Monasteries, that being material to know, for if they were Founded since the first Year of *R.* 1. they cannot prescribe in *non decimando*. I have also for the most part set down what Order the Houses were of, that the Reader may satisfie himself whether they were of any of those Orders that were priviledged from the payment of Tythes: for the valuations I have followed Mr. *Dugdale*, as being a sure Author, having observed many Errors in that of Mr. *Speed*.

In the perusal of this Catalogue you will find how many Foundations were made of Monasteries in the first Century after the Conquest, and till the Reign of King *John*, that if they had continued at that rate, the greatest part if not all the Land in *England* had by this day been Monastery Land. But in King *John*'s time they began to slack, and in the ninth of *H.* 3. the Statute of Mortmain was made, after which you will find but few Religious Houses (as they were called) Founded.

Magna Charta.

Dugdale 145.

Stows Survey of London, 930.

The *Cistertian* Order came into *England* about the year of our Lord, 1128, and in the ensuing Table you may see how well they prospered, that in so short a time there should be so many of the greater Abbies of that Order; but it should seem this Order began sooner. See *Monasticon Angl.* li. 1. p. 695. m. 1098.

The

The Black Canons regular of St. *Auguſtine* firſt came into *England*, as Mr. *Stow* ſays, in the Year 1108. and were firſt placed in Trinity Church within *Aldgate*, *London*. But I rather think he is miſtaken in the time, for I find ſome Monaſteries of that Order before that time: however, the enſuing Catalogue will inform you of their increaſe.

And it is without diſpute that the increaſe of Monaſteries, eſpecially thoſe of priviledged Orders, tended very much to the prejudice of the Secular Clergy that had the Cure of Souls; for beſides the Orders that were priviledged they appropriated all the Churches they could obtain, and how ill they were ſerved a Man may in ſome meaſure obſerve that peruſes the Statute of 15 *R.* 2. and 4 *H.* 4. for it appears by them that they endowed no Vicarages at all upon the appropriating Churches, or ſo meanly that the Vicars could not live upon them, and not at all Hoſpitality practiſed. And therefore the Parliament of *England*, which has always put a ſtop to the Uſurpations and Exorbitances of *Rome*, and to prevent the Religious Houſes deſtroying the Church, in the 15th Year of the Reign of King *Richard* the Second, made a Law, *That the Dioceſan of the place where any Church was to be appropriated, ſhould take care the Vicarage ſhould be well and ſufficiently endowed, beſides a portion to the Poor.* But this Act not having the effect was deſired and expected, the Biſhops of thoſe times

Endowment of Vicarages.

15 R. 2. c. 16

Palmers Rep. 219.

times being over-awed by his Holineſſes Mandates, or participating too much of his qualities, a ſecond good Act was made
14 H.4.cap.12. in the 14th Year of King *Henry* the Fourth, whereby it is Enacted, *That all thoſe Appropriations that were made ſince the former Statute without ſuch Endowments, were declared to be void. And that no Religious perſon (that is, Monks and Fryars) ſhould be made Vicar in any Church appropriated or to be appropriated by any means in time to come, and that no Vicarage ſhould be appropriated by theſe Statutes, and divers other Statutes cited in this Work upon ſeveral occaſions.* It is eaſie to gueſs what Opinion they had, even in the times of Popery, of theſe People called Religious Men.

I have now made too long a digreſſion; and will therefore proceed to the Catalogue I promiſed the Reader.

Here

Here follows a Catalogue of the ſeveral Monaſteries, that upon the general Survey taken in the 26th Year of *H.* 8. were returned to be of the Annual Value of 200 *l. per ann.* and upwards within *England* and *Wales*, and by conſequence diſſolved by the Statute of 31 *H.* 8. and by that means are capable of being diſcharged of the payment of Tythes; with the Date of their Foundations, as near as I can compute, with what Orders they were of. In which obſerve, that *A.* ſtands for *Abbey*, P. for *Priory*, *Ben.* for *Benedictins*, *Ciſt.* for *Ciſtertians*, *Præm.* for *Præmonſtratenſes*, *Car.* for *Carthuſians*, *C. S. A.* for *Canons of St. Auſtin*, *F.* for *Founded*, *T.* for *Tempore*; and in the Valuations I have rejected all *ob.* and *q.*

Berks.

	l.	*s.*	*d.*
READING *Ben.F.T.*H.1.	1938	14	3
Buſhelham *A.C.S.A.F.* 13 E.3.	285	11	0
Abington *A.Ben.F.*720.	1876	10	9

Bedford.

Newnham *P.C.S.A.T.*H.1.	293	5	11
Elmeſtow *A.Ben.F.T.*W.Conqueſt	284	12	11
Wardon *A.Ciſt.F.* 4. *Steph.* 1138.	389	16	6
Chickſand *P.White C.Gibertines F.T.*W.Ruf.	212	3	5
Dunſtable *A.C.S.A.F.T.*H.1.	344	13	3
Woeburn *A.Ciſt.F.T.* Johannis Regis.	391	18	2

Bucks.

Bucks.

	l.	*s.*	*d.*
Ashrugge *Coll.C.S.A.F.T.* E. 1.	416	16	4
Noteley *A.C.S.A.F.T.* H. 1. 1112.	437	6	8
Missenden *A.Ben.F.*1293.	261	14	6

Cantabr.

Thorney *A.Ben.F.* 972.	411	12	11
Barnwel *P.C.S.A.F.T.* H. 1. 1092.	256	11	10

Cestr.

S. Werburge *A.Ben.F.* 1095.	1003	5	11
Combermeeve *A.Cist.F.*1134.	225	9	7

Cornub.

Bodnim *P.C.S.A.F.* 936.	270	0	11
Launceston *A.C.S.A.T.* W.Conquest.	354	0	11
St. Germans *A.C.S.A.F.T.* Ethelstani Regis.	243	8	0

Cumbr.

Carlisle *P.C.S.A.F.T.* W.Ruf.	418	3	4
Holmcoltrum *A.Cist.F.* 1135	427	19	3

Derb.

Darley *A.C.S.A.F.T.* H. 2.	258	14	5

Devon.

Ford *A.Cist.F.* 1133.	374	10	6
Newham *A.Cist.F.* circa 1246.	227	7	8

Dinkeswel

	l.	s.	d.
Dinkeſwel *A. Ciſt. F.* 1201.	294	18	6
Hertland *A.C.S.A.F.T.* H. 2.	306	3	2
Torre *A.Præm.F.T.* R.1	396	0	2
Buckfaſt *A. Ciſt. F.T.* H. 2.	466	11	11
Plimpton *A.Ciſt.F.T.* E. 1	241	17	9
Taveſtock *A.Ben. F.* 961.	902	5	7
Exon *P.Cluna F.T.* H. 1.	502	12	9

Dorcet.

Abbotsbury *Ben. F.* circa 1016.	390	19	2
Middleton *A.Ben.F.* per R. Ethelſtan.	578	13	11
Tarrent *A.Ciſt.F.* per H. 3.	214	7	9
Shafton *A. Ben.F.* 941.	1166	8	9
Cerne *A. Ben. F.T.* R. Edgari	515	17	10
Sherborne *A.Ben.F.* circa 370.	682	14	7

Dunelm.

St. Cuthbert *A.Ben. F.* circa 824.	1366	10	9
Tinmouth *P.Ben.F.*	397	10	5

Eſſex.

Berking *A.Ben. F.* 680.	862	12	5
Stratford Langthorn *A.Ciſt.F.* 1135.	511	16	3
Waltham *A.C.S.A.F.* circa 1060.	600	4	3
Walden *A. Ben. F.* 1136.	372	18	1
St. Oswith *A.C.S.A.F.* 1120.	677	1	2
Colcheſter *A.C.S.A.T.* H. 1.	523	17	0

Glouc.

Briſtol *A.C.S.A.F.* circa *T.* H. 1.	670	13	11
Hayles *A.Ciſt.F.* 1246.	357	7	8

Winch-

	l.	s.	d.
Winchcomb *A.Ben.F.* 787.	759	11	9
Tewsbury *A.Ben.F.* 715.	1598	1	2
Cirenceſter *A.C.S.A.F.T.* H. 1.	1051	7	1
Kingſwood *A.Ciſt.F.* 1139.	244	11	3
Glouceſter *A.Ben.F.* 680.	1946	5	9
Lanthony *P.*juxta Glouc.*C.S.A.F.*1136.	648	19	11

Hants.

St.Swithins Winton *A.Ben.F.*634.	1507	17	2
Hyde *A.Ben.F.* per Regem Elfred.	865	18	0
Wherwel *A.Ben.*F.*T.* Edgari Reg.	339	8	7
Romſey moniales *Ben.F.*907.	393	10	10
Twinham *P.C.S.A.F.* ante 1042.	312	7	0
Bello loco *A.Ciſt.F.* 1204.	326	13	2
Southwick *P.C.S.A.F.T.* H. 1.	257	4	4
Tichfield *A.Præm.F.T.*H. 3.	249	16	1

Hertford.

St. Albans *A.Ben. F.* 755.	2102	7	1

Hunts.

St. Neots *A.Ben.F.* circa *T.* H. 1.	241	11	4
Ramſey *A. Ben. F.* 969.	1716	12	4

Kanc.

St. Auſtins prope Cant. *A.Ben. F.* 605.	1413	4	11
Ledis *P.C.S.A.F.* 1119.	362	7	7
Ferverſham *A.Clun.F.* 1147. per R. Steph.	286	12	6
Boxley *A.Ciſt.F.* 1144.	204	4	11
Roffen *A.Ben. F.* 600.	486	11	5
Malling *A.Ben.* per Regem Edm.	218	4	2

	l.	s.	d.
Dertford *A.C.S.A.F.* 49 E. 3. per ipſ. R.	380	0	0
Lanc.			
Whalley *A.Ciſt.F.* 1172.	321	9	1
Leic.			
Leiceſtr. *A.C.S.A.F.* 1143.	951	14	5
Croxden *A. Præm.* circa *T.* R. 1. Reg.	385	0	10
Launda *A.C.S.A.F.T.* W. Ruf.	399	3	3
Lincoln.			
Lincoln St. Cath. *P.Gilbert F.T.* H.2.	202	5	0
Kirkſteed *A.Ciſt.F.* 1139.	286	2	7
Reveſly *A.Ciſt. F.* 1142.	287	2	4
Thornton *A.C.S.A.F.* 1139.	594	17	10
Bardney *A.Ben.F.* 712.	366	6	1
Croyland *A.Ben.T.*Reg.Ethelred 716.	1803	15	10
Spalding *A.Ben.F.* 1052.	761	8	11
Sempringham *A.Gilb.F.* 1148. 14 Steph.	317	4	1
Epworth moniale *Carthuſ.* 10 R. 2. fundat.	237	15	2
London and *Midd.*			
St. John Jeruſal. *P.F.T.* H.1. 1100.	2385	12	8
St.Barthol.Smithfield *C.S. A.F.* 1102	653	15	0
St. Mary Biſhopſgate *Pr.F.*1187. 9 R.1.	478	6	6
Clerkenwel *P.Ben.F.T.* Reg.Steph.	262	19	0
London Minors *Ben. F.T.* E.1.	318	8	5
Weſtminſter *A. Ben. F.T.* Edgari.	3471	0	2
Sion *A.C.S.A.F.* per Reg. H. 5	1731	8	4
London domus *Cart. fundat. T.* E. 3. Reg.	642	0	4
S.Clare extra Algate monial. *F.* 1292.	418	8	5

	l.	s.	d.
St. Mary Charter-house Carth. *F.* 1371.	736	2	7
St. Johns Holywell monial. *nigr. f.* 1318.	347	1	3
St. Mary East-Smithfield *A. Cist. F.* 34 E. 3.	602	11	10

Norfol.

Thetford *A. Clun. F.* 1103	312	14	4
Wymundham *A. Ben. F.* 1139.	211	16	6
Hulmo *A. Ben. F.* per Canutum Reg.	583	17	0
Westdreham *A. Præm. F. T.* H. 2.	228	0	0
Walsingham *A. C. S. A. F.* circa *T.* Steph. R.	391	11	7
Castle Acre *A. Clun. F.* 1090.	306	11	4
West Acre *A. Clun. F. T.* W. Ruf.	260	13	7

Northon.

Burgi St. Pet. *A. Ben. F.* per ro. fere R. Mer.	1721	14	0
Pipewell *A. Cist. F.* 1143.	286	11	8
S. Andreas *P. Clun. F.* 1067.	263	7	1
Sulby *A. Præm. F. T.* Steph. Reg.	258	8	5

Nott.

Lenton *P. Clun. fund. T.* H. 1.	329	5	10
Thugarton *P. C. S. A. F. T.* H. 1.	259	9	4
Welbeck *A. C. S. A. F. T.* Reg. Steph.	249	6	3
Warsop *P. C. S. A. fundat.*	239	10	5
Bella Valla *Pri. Carth. F.* circa 16 E. 3.	227	8	0
Newsteed *P. C. S. A. F. T.* E. 3.	219	18	8

These two last are under value in Mr. Dugdale, *but thus* per Speed.

Northumbr.

Tinmouth *a Cell to* St. Albans *a Nunnery.*	511	4	1

Oxon.

	l.	*s.*	*d.*
Godstow *A.Ben.F.T.* Steph. Reg.	274	5	10
Eynesham *A.Ben. F.T.* Ethelred Reg.	441	12	2
Osney *A.C.S.A.F.T.* H. 1.	654	10	2
Thama *A.Cist.F.T.* H.1. per Speed.	256	13	7
Oxford *P.* per Speed *fund.* ante Conq.	224	4	8
Dorcester per eundem *A.C.S.A.F.* 635.	219	12	0

Salop.

Hagmond *A.C.S.A.F.* 1100.	259	13	7
Lillesful *A.C.S.A.F.* per Adelfleda R. Merciæ.	229	3	1
Wigmore *A.C.S.A.F.* 1172. per Speed,	267	2	10
Wenlock *P. Clun. F.* 1181. vel antea,	401	0	7
Salop *A.C.S.A.F.* 1081. per Speed,	615	4	3
Hales Owen *A. Præm. fund. T.* R. Joh.	337	15	6

Somerset.

Glassenbury *A.Ben.* circa 300 F.	3311	7	4
Bruton *A.C.S.A.F.T.* Conquest.	439	6	8
Henton *P. Carth. F.T.* H. 3.	248	19	2
Witham *P. Cart.F.* per H. 2.	215	15	0
Taunton *P.C.S.A.T.* H.1.	286	8	10
Bathon *A.Ben.F.T.* H. 3.	617	2	3
Keynesham *A.C.S.A.F.T.* H. 1.	419	14	3
Michelney *A. Ben. F.* 740.	447	4	11
Buckland *P.Cist. F. T.* E. 1.	223	7	4

Staff.

De la cres *A. Cist. F.* 1153.	227	5	0
Burton sup. Trent. *A. Ben. F. T.* Eadredi R.	267	14	3
Croxden *A.Cist.* cont. *Fundat.*			

Suffolk.

	l.	*s.*	*d.*
S. Edmundi Bury *A.Ben. F.* 1020.	1659	13	11
Butley *A.C.S.A F.* 1171.	318	17	2
Sibeton *A.Cist.F.* 1150.	250	15	7
Ixworth *P.C.S.A.F.T.* Conq.	280	9	5

Surrey.

Merton *P.C.S.A.F.*1121.*T.* H. 1.	957	19	5
Shene *P. Carth. F.* 1414.	777	12	0
Chertsey *A.Ben.* F. 666.	659	15	8
Newark *P.*	258	11	11
S.Maries Overs. *A.C.S.A.*F. 7 H. 1.	624	6	6
Bermundesey *A.C.S.A.F.* 7 H. 1.	474	14	4

Sussex.

Lewes *A.Clun. F.T.* W. R.	920	4	6
Robertsbridge *A.Cist.F.T.* H. 2.	248	10	6
Battayle *A. Black Monks F.* 1066.	987	0	11

Warw.

Combe *A. Cist. F. T.* Steph. R.	311	15	1
Kenelworth *A.C.S.A.F.T.* H.1.	538	19	0
Merival *A.Cist.F.* 1148.	254	1	8
Nuneaton monial *Ben.F.T.* H. 2.	253	14	5

Wilts.

Malmesbury *A.Ben.F.* circa 670.	803	17	7
Bradenstock *P.C.S.A.F.T.* Conq.	212	19	3
Edington *P.C.S.A.F.* 1352.	442	9	7
Ambresbury *A.Ben.F.* 1177.	495	15	2

Wilton

	l.	s.	d.
Wilton *A.Ben.F.T.* Ethelwolpi R.	601	1	1
Fareley *a Cell to* Lewes per Speed *F.* 1125. *Clun.*	217	0	4
Lacock *A.C.S.A.F.* 1232 per Speed,	203	12	3

Wigorn.

Malverne *A.Ben.F.* 1083.	308	1	5
Eveſham *A.Ben. T.* Offæ.	1183	12	9
Perſhore *A. Ciſt. F.* 1138.	643	4	5
Haleſowen *A. Præm. F. T.* Joh. Reg.	282	13	4
Brodeſly *A.Ciſt.F.*1138.	388	9	10

Eborum.

St. Mary Eborum *A.Ben. F.* 2 W. Ruf.	1550	7	0
Selby *A. Ben. F. T.* Conq.	729	12	10
Kirkſtal *A.Ciſt.F.* 1147.	329	2	11
De rupe *A.Ciſt. F.* 1147.	224	2	5
Monks Burton *A. Clun. F.* circa 1186.	2039	3	6
Noſtel *A.C.S.A.F.T.* H. 1.	492	18	2
Pomfrait *A.Clun. F. T.* Conq.	337	14	8
Gisborne *A.C.S.A.F.T.* Steph. Reg.	628	3	4
Whitby *A.Ben. F. T.* Conq.	437	2	9
Montegratiæ *A.Carth. F.* circa 1396.	323	2	10
Newburge *P.C.S.A.F.* 1145.	3067	8	3
Belland *A.Ciſt. F.* 1134.	238	9	4
Kirkham *A.C.S.A.F.T.* H. 1.	269	5	9
Melſa *A. Ciſt. F.* 1136.	299	6	4
Brilington *C.S.A.F.T.* H. 1.	547	6	11
Walton *A.Gilbertines F.T.* Steph. Reg.	360	16	10
Bolton in Craven *P.C.S.A.F.T.* H. 1.	212	3	4
Rival *A. Ciſt. F.* 1132.	278	10	2
Jerval *A.Ciſt.F.T.* Steph. Reg.	234	18	5
Furnes *A. Ciſt.* F. 1127.	805	16	5

	l.	s.	d.
De Fontibus *Cist. F.* 1132.	998	6	8
Warter *P.C.S.A.F.T.* H. 1.	221	3	10
Rithal per Speed.	351	14	6
Old Maulton *A.F.T.* Steph. R. per Speed.	257	7	0
St. Michael juxta Hull *Carth. F.* 1377.	231	17	3

Wallia.

Valle de Sancta Cruce *Com.* Denbigh, *Cist. F. T.* E. 1.	214	3	5
Strata Florida Cardiganſh. *Ciſt.* or *Clun. F. T.* Conq.	1226	6	0

Gloria Deo Patri, Deo Filio & Deo Spiritui Sancto. Amen.

THE

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